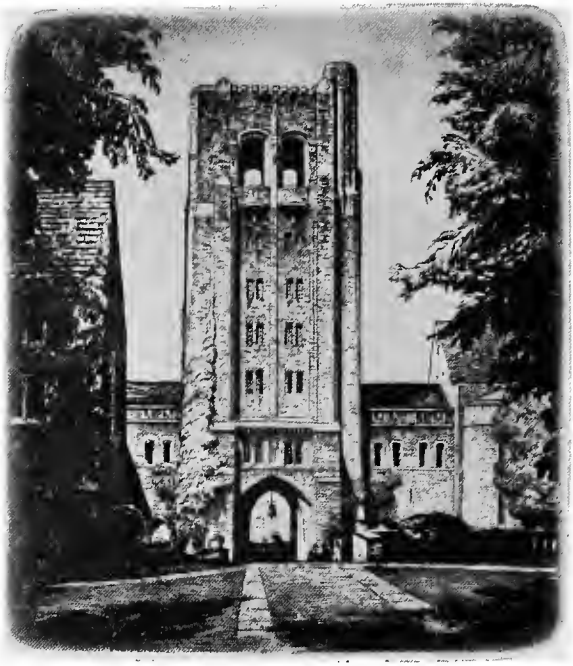

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HANDBOOK

ON THE

CONSTRUCTION

AND

INTERPRETATION OF THE LAWS

By HENRY CAMPBELL BLACK, M.A.

AUTHOR OF BLACK'S LAW DICTIONARY, AND OF TREATISES ON JUDGMENTS, TAX TITLES, INTOXICATING LIQUORS, BANKRUPTCY, CONSTITUTIONAL LAW, ETC.

SECOND EDITION

ST. PAUL, MINN.
WEST PUBLISHING CO.
1911

PREFACE TO THE SECOND EDITION

THE following pages contain a condensed statement and exposition of the accepted rules for the construction and interpretation of the written laws, whether constitutional or statutory. In accordance with the general plan of the Hornbook Series, these rules have been formulated somewhat after the manner of a code, expressed in brief black-letter paragraphs numbered consecutively throughout the book, and explained, developed, and illustrated in the subsidiary text.

The cases cited in the original edition of this work were considered sufficient in number and variety to explain and enforce the doctrines set forth, attention being given to the more important and leading authorities and to those which had furnished the most forcible or striking illustrations of the application of the rules of construction in actual practice. But in view of the great and growing body of decisions upon this highly important subject, it has been deemed advisable, in the present edition, very largely to increase the number of citations. Practically all of the reported cases dealing with the general subject or any of its subdivisions, decided within the fifteen years which have elapsed since the first publication of the book, have been collected by the author and cited in their proper connections. These additions have also resulted in a complete and thorough revision of the entire work. Many parts of it have been greatly expanded and some wholly rewritten. Some changes have also been made in the arrangement of the several parts or sections of the book, for the sake of what now appears to the writer a more logical and orderly system of classification.

In the preface to the first edition the statement was made —and a study of the later decisions induces the author to repeat it with emphasis—that it was impossible, in examining the course and current of the authorities, to overlook the great change which has come over the disposition of the

courts with reference to their office as interpreters of the law. It is no longer assumed to be the province of the judiciary either to quibble away or to evade the mandates of the legislature. On the contrary, the modern authorities recognize only one rule as absolutely unvarying, namely, to seek out and enforce the actual meaning and will of the law-making power. Thus, the doctrine of "equitable" interpretation has become obsolete, the difference between "strict" and "liberal" construction has been reduced to a minimum, and the sanctity of the common law is no longer so jealously insisted upon, and in fact some of the latest adjudications, especially in some of our newer commonwealths, exhibit an attitude towards that once venerated system which very nearly approaches contempt.

It is in accordance with this modern spirit that the present work has been written; and the author's constant endeavor, while assigning to all the various minor and related rules the degree of prominence which their relative importance demanded, has been to give adequate expression to the one cardinal and fundamental principle of all true interpretation, that the actual intention of the legislature should in all cases be sought out and made effective. H. C. B.

WASHINGTON, D. C., April 1, 1911.

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This volume contains Key-Number Annotations

That is to say, for every point of law which is stated or discussed in the text, and in support of which cases are cited, there is added to the author's note a citation to the Key-Number section or sections in the Decennial Digest or in the Key-Number Series, under which all cases directly involving that point have been digested. A similar citation to the Century Digest is given, except where the principle involved is one on which no case law existed prior to 1897.

HANDBOOK

ON THE

CONSTRUCTION AND INTERPRETATION OF THE LAWS

SECOND EDITION

CHAPTER I

NATURE AND OFFICE OF INTERPRETATION

1–2. Definition of Terms.
3. Rules of Construction Not Mandatory.
4. Object of Interpretation.
5–6. Interpretation the Office of the Judiciary.

DEFINITION OF TERMS

1. Interpretation, as applied to written law, is the art or process of discovering and expounding the intended signification of the language used, that is, the meaning which the authors of the law designed it to convey to others.

2. Construction, as applied to written law, is the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful either by reason of apparently conflicting provisions or directions, or by reason of the fact that the given case is not explicitly provided for in the law.

"In law, interpretation usually implies either that a word or phrase, read in the light of other parts of the instrument or of extrinsic evidence, is found to have a meaning

different from that first apparent upon its face, or that a word or passage, not clear in itself, is found, by transposition or reconstruction of the order of words, or by different punctuation, to have a clear meaning," [1] or, we may add, that a technical word, or term of art, is explained in its technical signification (which may differ from the vernacular) or is found, upon examination, to connote numerous elements not shown upon its face. Interpretation, according to the more strict etymological view of it, implies a precedent obscurity in the language to be interpreted. It is the explanation, or rendering in intelligible or familiar terms, of that which before was ambiguous, hidden, or unintelligible. But on wider considerations it is not to be restricted to the expounding of ambiguous or doubtful laws. For its services may become necessary when the question is raised whether the terms of a law, in themselves unambiguous, apply to a given state of facts. If this question is solved from the text alone, by discovering and explaining the meaning of the words used, the process is properly called "interpretation." So, also, it is the office of interpretation to give a signification to such terms as "due process of law," "bona fides," "conveyance," and the like, which cannot be said to be ambiguous, still less unintelligible, but which have acquired a very exact technical meaning in the law.

The term "construction," on the other hand, implies a combination of elements.[2] In grammar, it signifies the syntactical arrangement of the words in a sentence. In the mechanic arts, it denotes the building or combining to-

[1] Century Dict. voc. "Interpretation."

[2] "In the most general adaptation of the term, construction signifies the representing of an entire whole from given elements by just conclusions." Lieber, Hermeneutics, 49. "Interpretation" is employed for the purpose of ascertaining the true sense of any form of words, while "construction" involves the drawing of conclusions regarding subjects that are not always included in the direct expression. Bloomer v. Todd, 3 Wash. T. 599, 19 Pac. 135, 1 L. R. A. 111.

The construction of statutes is the process of discovering the intention of the legislature as to the application thereof to a given

gether of the structural parts of anything. So, in law, the fundamental idea of construction is that of putting together two or more elements (premises) and thence drawing an inference (conclusion). Hence construction, as applied to written instruments, means the putting together of two or more indicia of the writer's meaning (whether found within or without the text) and thence deriving a conclusion in regard to that meaning.

It will thus be seen that there is a substantial difference between interpretation and construction as methods for the exegesis of written laws. In strictness, interpretation is limited to exploring the written text, while construction goes beyond and may call in the aid of extrinsic considerations. "Interpretation," says Dr. Lieber, "differs from construction in that the former is the art of finding out the true sense of any form of words, that is, the sense which their author intended to convey, and of enabling others to derive from them the same idea which the author intended to convey. Construction, on the other hand, is the drawing of conclusions, respecting subjects that lie beyond the direct expressions of the text, from elements known from and given in the text; conclusions which are in the spirit, though not within the letter, of the text. Interpretation only takes place if the text conveys some meaning or other. But construction is resorted to when, in comparing two different writings of the same individual, or two different enactments by the same legislative body, there is found contradiction where there was evidently no intention of such contradiction one of another, or where it happens that part of a writing or declaration contradicts the rest. When this is the case, and the nature of the document or declaration, or whatever else it may be, is not such as to allow us to consider the whole as being invalidated by a partial or other contradiction, then resort must be had to construc-

case, when such intention is doubtful either by reason of apparently conflicting provisions, or the fact that the given case is not explicitly provided for. Mercantile Trust Co. v. Adams (Ark.) 129 S. W. 1101. *See "Statutes," Dec. Dig. (Key No.) §§ 259–265; Cent. Dig. § 181.*

tion. So, too, if required to act in cases which have not been foreseen by the framers of those rules by which we are nevertheless obliged, for some binding reason, faithfully to regulate as well as we can our action respecting the unforeseen case." [3] As an illustration of construction, we may suppose the following case: A statute provides a penalty for any person who offers resistance to "magistrates, sheriffs, constables, bailiffs, marshals, or other officers," in the discharge of their official duty. The defendant offered resistance to a county surveyor in the discharge of the latter's official duty. Is the case within the law? If we observe the rule that general terms following an enumeration by specific terms are to be taken as applying only to others of the same class with those enumerated; if we notice that the officers enumerated in the statute are all of the class of officers having to do with the administration of justice or the execution of the laws; if the title of the act shows us that it was intended to be restricted to such officers; if we find from an examination of the condition of affairs which induced the passage of the statute, and the evil which it was designed to remedy, that only judicial officers were intended to be thus protected; if we discover that the language of the act was copied from that of a similar statute existing in another state, and the law, in that state, had already received a judicial construction whereby its operation was limited to that class of officers; and if from these several premises (all of which are indicia of the meaning of the legislator) we deduce the conclusion that a county surveyor is not within the terms of the statute, then the process which has led to this result is properly called "construction." On the other hand, it has been settled, by

[3] Lieber, Hermeneutics, 11, 43, 44. And see Deane v. State, 159 Ind. 313, 64 N. E. 916; Johnson v. Des Moines Life Ins. Co., 105 Iowa, 273, 75 N. W. 101; Stratton v. Stratton, 68 N. H. 582, 44 Atl. 699; People v. New York City Tax Com'rs, 95 N. Y. 554; Terre Haute & L. R. Co. v. Erdel, 158 Ind. 344, 62 N. E. 706; Jones v. Proprietors of Morris Aqueduct, 36 N. J. Law, 206; State ex rel. Attorney General v. Smith, 35 Neb. 13, 52 N. W. 700, 16 L. R. A. 791; Bloomer v. Todd, 3 Wash. T. 599, 19 Pac. 135, 1 L. R. A. 111. *See "Statutes," Dec. Dig. (Key No.) § 174; Cent. Dig. § 254.*

the decisions of the courts, that the term "ex post facto laws," as used in the constitutions, applies only to penal and criminal proceedings and not to civil actions. This explication of the meaning of this term was the result of "interpretation." Again, "the Constitution of the United States says that Congress shall have the power of regulating commerce, but it does not say how far this regulatory power shall extend. This sentence, then, must be interpreted, if we are desirous to ascertain what precise meaning the framers of our Constitution attached to it, and construed, if we are desirous of knowing how they would have understood it respecting new relations, which they could not have known, at the time, and which nevertheless fall decidedly within the province of this provision." [4]

In practice, however, both courts and text-writers are in the habit of using the two terms "interpretation" and "construction" as synonymous or interchangeable.[5] This is because either or both of these methods may be resorted to freely, whenever the necessity of elucidating the meaning of a statute becomes apparent; and niceties of language are not much observed when they do not correspond with an imperative necessity of maintaining a distinction between the things themselves. The technical distinction between the two terms will not be scrupulously observed in the following pages.

It should also be observed that the two terms in question may be applied either to the art, the process, or the result of the elucidation. It is in the latter sense that we employ them when we say that a court has put a "narrow interpretation" upon a statute, or that a case has been brought within the terms of a statute "by construction."

Different Methods of Interpretation

The methods of interpretation have been variously classified by different writers. According to one of the most

[4] Lieber, Hermeneutics, 169.

[5] See United States v. Keitel, 211 U. S. 370, 29 Sup. Ct. 123, 53 L. Ed. 230, where the court remarks that, conceding that there may be an abstract distinction between "construction" and "interpretation," yet in common usage the words have the same significance. *See "Statutes," Dec. Dig. (Key No.) § 174; Cent. Dig. § 254.*

eminent, interpretation is said to be either "legal," which rests on the same authority as the law itself, or "doctrinal," which rests upon its intrinsic reasonableness. Legal interpretation may be either "authentic," when it is expressly provided by the legislator, or "usual," when it is derived from unwritten practice. Doctrinal interpretation may turn on the meaning of words and sentences, when it is called "grammatical," or on the intention of the legislator, when it is described as "logical." When logical interpretation stretches the words of a statute to cover its obvious meaning, it is called "extensive";[6] when, on the other hand, it avoids giving full meaning to the words, in order not to go beyond the intention of the legislator, it is called "restrictive." [7]

In the Roman and modern civil law, some of the foregoing terms are used in a slightly different sense. "Authentic" interpretation is that given by the legislature itself, which alone, under that system, has the authority to resolve doubts and fix the sense of words, and whose decision is obligatory on citizens and tribunals and must be obeyed, both within and without courts of justice.[8] "Customary" interpretation is that given by the judges, consulting the spirit of the law, jurisprudence, usages, and

[6] "The so-called 'extensive' interpretation of statute law ex ratione legis, is the extension of the provisions of the law to a case which they do not comprise because the case falls within the scope of the law, although the provisions of the law do not include it. There is truly an extension of the law." Austin, Jurisprudence, § 913.

[7] Holland, Jurisprudence, 344; Lieber, Hermeneutics, 62, 63.

[8] Under the Spanish law as formerly in force in Texas and now in Mexico, the function of interpreting laws was legislative and not judicial; and there was a provision in the Constitution of the Republic of Texas that "the tribunals and courts, being authorized solely to apply the laws, shall never interpret the same nor suspend their execution." See Houston v. Robertson's Adm'r, 2 Tex. 1, 26. And this is in accordance with the general principles and conceptions of the Roman law, which—diametrically opposed to the common law in this respect—regarded the office of interpretation as a prerogative of the law-giver, not of the judge. This notion was expressed in the maxim, "Ejus est interpretari cujus est condere." See Taylor, Civil Law, 96. *See "Statutes," Dec. Dig. (Key No.) §§ 176, 179, 218–220; Cent. Dig. §§ 255, 258, 294–298.*

equity, and has a certain force and authority, especially when two or more decisions made by a superior tribunal on a similar subject-matter are in conformity with each other. "Doctrinal" interpretation consists in the opinions given by jurisconsults and other persons versed in the law.[9]

The term "authentic" interpretation may also be applied to the interpretation put upon the laws of a given state by its own government, including the judicial department thereof, when the same are required to be interpreted and applied by the tribunals of another state. The courts of one of the states of the American Union will follow the construction put upon the statutes of another state by the courts of the latter state. So the courts of the United States are the "authentic" interpreters of the Constitution and laws of the United States, and the courts of the states are bound to follow and adopt their interpretation of those laws. And conversely, the federal courts adopt the construction put upon state statutes by the courts of the state which enacted them.[10]

Lieber, in his work on Hermeneutics, gives the following classification of the different kinds of interpretation:

"Close" interpretation is adopted if just reasons connected with the character and formation of the text induce us to take the words in their narrowest meaning. This species of interpretation is also generally called "literal."

"Extensive" interpretation, called also "liberal" interpretation, adopts a more comprehensive signification of the words.

"Extravagant" interpretation is that which substitutes a meaning evidently beyond the true one. It is therefore not genuine interpretation.

[9] Houston v. Robertson's Adm'r, 2 Tex. 1, 26. *See "Statutes," Dec. Dig. (Key No.) §§ 176, 219, 220; Cent. Dig. §§ 255, 296–298.*

[10] Gatewood v. North Carolina, 203 U. S. 531, 27 Sup. Ct. 167, 51 L. Ed. 305; Bauserman v. Blunt, 147 U. S. 647, 13 Sup. Ct. 466, 37 L. Ed. 316; Leffingwell v. Warren, 2 Black, 599, 17 L. Ed. 261; Shelby v. Guy, 11 Wheat. 361, 6 L. Ed. 495; Black, Const. Law (3d Ed.) 186. *See "Courts," Dec. Dig. (Key No.) §§ 97, 366; Cent. Dig. §§ 329–334, 954–968.*

"Free," or unrestricted, interpretation proceeds simply on the general principles of interpretation in good faith, not bound by any specific or superior principle.

"Limited," or restricted, interpretation is when we are influenced by other principles than the strictly hermeneutic ones.

"Predestined" interpretation takes place if the interpreter, laboring under a strong bias of mind, makes the text subservient to his preconceived views or desires. This includes "artful" interpretation, by which the interpreter seeks to give a meaning to the text other than the one he knows to have been intended.[11]

According to the same author, construction is either close, comprehensive, transcendent, or extravagant, the varieties corresponding to the similar species of interpretation.

"Close" construction is that which inclines to the directest possible application of the text, or the principles it involves, to new or unprovided cases, or to contradictory parts.

"Comprehensive" construction is that which inclines to an extensive application of the text, or the principles it involves, to new, unprovided, or not sufficiently specified cases or contradictions.

"Transcendent" construction is that which is derived from or founded upon a principle superior to the text, and nevertheless aims at deciding on subjects belonging to the province of that text.

"Extravagant" construction is that which carries the effect of the text beyond its true limits, and therefore is no longer genuine construction, as the last-named species becomes of a more and more doubtful character the more it approaches to this.[12]

There are some other distinguishing terms applied to the interpretation or construction of laws which require a brief mention. Thus, "strict" construction is the construction of a statute according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact

[11] Lieber, Hermeneutics, 54–60.

[12] Id., 65–69.

and technical meaning, and admits no equitable considerations or implications. It is the same as the "close" or "restrictive" construction of the writers quoted above. Its antithesis is "liberal" construction. Again, interpretation or construction is said to be either prospective or retrospective, according as it makes the provisions of the text apply only to future cases or transactions, or makes them include also cases or transactions which occurred before the passage of the law. Finally, when the words of a law are wrested from their plain and obvious meaning, and made to bear an entirely different meaning (for the sake of avoiding an absurd or unjust consequence), this is called "artificial," "forced," or "strained" construction. It corresponds to the "extravagant" construction or interpretation of Dr. Lieber.

RULES OF CONSTRUCTION NOT MANDATORY

3. The rules of construction are not rules of positive law, unless expressly provided by statute. They rest on the authority of the courts, which have gradually evolved them, and they are not imperatively binding in the same sense as are the enactments of the legislature.

"Rules of interpretation are not imperative like the mandatory provisions of law; they are rather in the nature of suggestions leading up to the probable meaning where it has been carelessly or inartificially expressed; and where the words are susceptible of more than one interpretation, they (the rules) may possibly guide us to the one intended." [13] At the same time, it should be noted that these rules of interpretation have now grown into a very complete and detailed system, and that the courts do not feel themselves at liberty to disregard the rules which may be applicable to the given case, unless for very special reasons. And indeed, it has been suggested, and with much

[13] Cooley, Taxation, 265.

plausibility, that the legal rules for the interpretation of statutes form a part of the "jus" or ordinary law of the country, which every person is bound to be conversant with at his peril, in accordance with the maxim, "Ignorantia juris neminem excusat." [14]

It is also proper for the courts to assume, when called upon to construe a statute, that the legislature, in settling its phraseology, has done so with reference to the established canons of statutory interpretation.[15] And it should be remarked that these rules or canons are the same in equity as in law.[16]

Statutory Construction Acts

The function of establishing rules for the construction and interpretation of statutes, though properly judicial, has often been assumed by the legislatures. Aside from special declaratory or expository statutes, to be noticed in a subsequent chapter, and the "interpretation clauses" ordinarily found in elaborate and complex pieces of legislation, separate statutory construction statutes have been enacted in some of the states. In some cases, these do not go beyond a general provision that all general terms and expressions used in statutes shall be liberally construed, to the end that the true intention of the legislature may be fully carried out.[17] In other cases, as in New York, such a statute may amount to a code of rules for the interpretation of words and phrases commonly employed in legislation, for the application of grammatical rules, the computation of time, and other such matters.[18] But laws of this kind have not the force of constitutional provisions. They cannot be allowed to defeat the manifest intention of the legislature as shown in a subsequent statute, nor do they bind

[14] Hardcastle, Stat. Law, 3.

[15] A. L. & E. F. Goss Co. v. Greenleaf, 98 Me. 436, 57 Atl. 581. *See "Statutes," Dec. Dig. (Key No.) § 174; Cent. Dig. § 254.*

[16] A. L. & E. F. Goss Co. v. Greenleaf, 98 Me. 436, 57 Atl. 581. *See "Statutes," Dec. Dig. (Key No.) § 174; Cent. Dig. § 254.*

[17] See, for example, Kirby's Dig. Ark. § 7792; Brown v. Nelms, 86 Ark. 368, 112 S. W. 373. *See "Statutes," Dec. Dig. (Key No.) §§ 178, 179; Cent. Dig. §§ 257, 258.*

[18] Laws N. Y. 1892, c. 677.

the courts to construe it in a manner repugnant to its plain purpose and obvious meaning. Such statutes cease to be effective when necessarily in conflict with a later manifestation of the legislative will.[19]

OBJECT OF INTERPRETATION

4. The true object of all interpretation is to ascertain the meaning and will of the law-making body, to the end that it may be enforced. It is not permissible, under the pretence of interpretation, to make a law, different from that which the law-making body intended to enact.

"Statute law is the will of the legislature; and the object of all judicial interpretation of it is to determine what intention is conveyed, either expressly or by implication, by the language used, so far as it is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it." [20] The wisdom, policy, or expediency of legislation is a matter with which the courts have nothing whatever to do. Whether or not a given law is the best that could have been enacted on the subject; whether or not it is calculated to accomplish its avowed object; whether or not it accords with what is understood to be the general policy of legislation in the particular jurisdiction—these are questions which do not fall within the province of the courts. And hence a court exceeds its proper office and authority if it attempts, under the guise of construction, to mould the expression of the legislative will into the shape which the court thinks it ought to bear. The sole function of the judiciary is to ex-

[19] People ex rel. City of Buffalo v. New York Cent. & H. R. R. Co., 156 N. Y. 570, 51 N. E. 312; Davidson v. Witthaus, 106 App. Div. 182, 94 N. Y. Supp. 428; People v. Zito, 237 Ill. 434, 86 N. E. 1041; Great Northern Ry. Co. v. United States, 155 Fed. 945, 84 C. C. A. 93; Malone v. Williams, 118 Tenn. 390, 103 S. W. 798, 121 Am. St. Rep. 1002. *See "Statutes," Dec. Dig. (Key No.) §§ 176, 178, 179; Cent. Dig. §§ 255, 257, 258.*

[20] Maxwell, Interp. 1.

pound and apply the law. To enact the law is the prerogative of the legislative department of government. Nor can the courts correct what they may deem excesses or omissions in legislation, or relieve against the occasionally harsh operation of statutory provisions, without danger of doing more mischief than good.[21]

INTERPRETATION THE OFFICE OF THE JUDICIARY

5. As between the three departments of government, the office of construing and interpreting the written laws belongs to the judiciary ultimately, although the executive and legislative departments may be required, by necessity, to put their own construction upon the laws in advance of their exposition by the courts.

6. As between the court and the jury, on the trial of a cause, the construction and interpretation of all written instruments, including statutes and constitutions, is for the court.

When there arises a necessity for construing or interpreting the written laws, in order to discover their applicability to a given case or state of facts, the question of the meaning and intention of the legislature in this regard is a question of law, and as such it must be solved by the court; it is not for the determination of the jury.[22] When

[21] Sutherland, Stat. Constr. § 235, citing Waller v. Harris, 20 Wend. (N. Y.) 562, 32 Am. Dec. 590; State, to Use of Rosenblatt, v. Heman, 70 Mo. 441. And see United States v. Colorado & N. W. R. Co., 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (N. S.) 167; St. Louis & S. F. R. Co. v. Delk, 158 Fed. 931, 86 C. C. A. 95; Ellis v. Boer, 150 Mich. 452, 114 N. W. 239; Von Diest v. San Antonio Traction Co., 33 Tex. Civ. App. 577, 77 S. W. 632; Flowing Wells Co. v. Culin, 11 Ariz. 425, 95 Pac. 111. Compare, also, the remark of Lord Coke: "Viperina est expositio quæ corrodit viscera textus." 11 Coke, 34. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 176, 181; Cent. Dig. §§ 254, 255, 259, 263.*

[22] Dodsworth v. Anderson, T. Jones, 141; Byrne v. Byrne, 3 Tex.

the question depends upon the meaning of particular words or phrases, it may sometimes be necessary to call in the aid of the jury, but only to ascertain the correct signification of the language used, not to construe or interpret it in its application to the pending case. If the words in question are not technical terms, either as having a special sense by commercial usage, or as having a scientific meaning different from their popular meaning, but are words of common speech, then their interpretation is a matter within the judicial knowledge, and belongs to the court as a question of law.[23] But when technical terms (other than legal terms) or scientific terms, or the words and phrases of trade and commerce, or mercantile signs or abbreviations, or similarly obscure or specialized expressions, are found in a statute, and their explanation becomes relevant to the case on trial, the testimony of experts is admissible as to their meaning. And thereupon two questions arise, between which it is very necessary to preserve a clear distinction.

336; Belt v. Marriott, 9 Gill (Md.) 331; Large v. Orvis, 20 Wis. 696; Fairbanks v. Woodhouse, 6 Cal. 433; Inge v. Murphy, 10 Ala. 885; Barnes v. Mayor, etc., of Mobile, 19 Ala. 707; Thorp v. Craig, 10 Iowa, 461; City of Peoria v. Calhoun, 29 Ill. 317; Sierra County v. Nevada County, 155 Cal. 1, 99 Pac. 371; State v. Patterson, 134 N. C. 612, 47 S. E. 808; Winchell v. Town of Camillus, 109 App. Div. 341, 95 N. Y. Supp. 688; Rice v. State, 7 Ind. 332; People v. Peden, 109 Ill. App. 560; Ayres v. United States, 44 Ct. Cl. 110. But see Katzman v. Commonwealth, 140 Ky. 124, 130 S. W. 990. *See "Statutes," Dec. Dig. (Key No.) § 176; Cent. Dig. § 255.*

[23] Marvel v. Merritt, 116 U. S. 11, 6 Sup. Ct. 207, 29 L. Ed. 550; Nix v. Hedden (C. C.) 39 Fed. 109; State v. Baldwin, 36 Kan. 1, 22, 12 Pac. 318; Moran v. Prather, 23 Wall. 492, 23 L. Ed. 121. The question whether a statute requiring railroad trains to "slow down to a speed of not more than four miles an hour before running on, or crossing, any drawbridge over a stream which is regularly navigated by vessels," applies to the trestles and approaches leading up to a drawbridge proper, is a question for the court and not for the jury. Savannah, F. & W. Ry. Co. v. Daniels, 90 Ga. 608, 17 S. E. 647, 20 L. R. A. 416. See State v. Stevens, 69 Vt. 411, 38 Atl. 80, holding that the determination of the meaning of a word in a statute is for the trial judge, who may take any means to inform himself; and the exclusion of evidence offered to establish such meaning is not error. *See "Statutes," Dec. Dig. (Key No.) § 176; Cent. Dig. § 255.*

The first question is, what is the specific meaning of the term as used in the law? This is a question of fact. It is to be determined by the jury, in view of the evidence adduced with regard to it. But the second question is this: What effect has the term, used with this meaning, upon the construction of the statute? And this is a question of law, and is to be determined by the court.[24] "The construction of all written instruments belongs to the court alone, whose duty it is to construe all such instruments, as soon as the true meaning of the words in which they are couched, and the surrounding circumstances, if any, have been ascertained as facts by the jury; and it is the duty of the jury to take the construction from the court, either absolutely, if there be no words to be construed as words of art or phrases used in commerce, and no surrounding circumstances to be ascertained, or conditionally, when those words or circumstances are necessarily referred to them." [25] For example, in a case in Texas, the construction of the word "family," as used in a statute, became necessary to the decision of the case. The court refused to instruct the jury as to what constitutes a "family," but declared that question to be a matter of proof, and authorized the jury to interpret the meaning of the term for themselves. This was held to be error. For the term, when applied to a particular state of facts, presents a mixed question of law and fact; and it is the province of the court to declare the law, so far as the fact is governed by the law; and so far as the

[24] See Eaton v. Smith, 20 Pick. (Mass.) 150; Hutchison v. Bowker, 5 Mees. & W. 535; McNichol v. Pacific Exp. Co., 12 Mo. App. 401; Brown v. Brown, 8 Metc. (Mass.) 573; Pitney v. Glens Falls Ins. Co., 65 N. Y. 6. *See "Statutes," Dec. Dig. (Key No.) § 176; Cent. Dig. § 255.*

[25] Neilson v. Harford, 8 Mees. & W. 806. In Moran v. Prather, 23 Wall. 492, 23 L. Ed. 121, it was said: "Terms of art, in the absence of parol testimony, must be understood in their primary sense, unless the context evidently shows that they were used in the particular case in some other and peculiar sense, in which case the testimony of persons skilled in the art or science may be admitted to aid the court in ascertaining the true intent and meaning of that part of the instrument." *See "Statutes," Dec. Dig. (Key No.) § 176; Cent. Dig. § 255.*

fact is a question of proof, it is to be deduced by the jury from the evidence, and not from their personal knowledge.[26]

It may here be remarked that the office of interpreting statutes is regarded as a high and important judicial function, and it will not be exercised upon moot cases or hypothetical questions, nor in respect to legislation not yet enacted or not yet in force. In one of the recent cases the court refused to declare itself upon the operation and effect of an amendment to the criminal laws, applicable in capital cases, which, though duly enacted, had not yet gone into effect, maintaining that its duty was confined to the construction of existing laws.[27]

Construction of Foreign Laws

Similar questions arise as to the construction of foreign laws. It is well settled that foreign laws must be proved as facts, that is, they cannot be judicially noticed. As between the several states of the American Union, the statutes now generally provide that the official publications of the acts of the legislatures or the codes shall be competent original evidence of the existence and terms of those laws. But the rule remains, as always, that foreign laws are to be proved as facts. But, this being established, it is evident that two questions may be presented to the court trying a case in which such foreign laws become relevant. One question is this: What interpretation or construction is put upon the law in question by the courts of the state which enacted it? The other is, what construction should be put upon the statute by the court which is called upon to apply it to a given state of facts? In other words, the

[26] Goode v. State, 16 Tex. App. 411. Whether or not a given act is a work of necessity, within the meaning of an exception to a statute prohibiting labor on Sunday, is a question of fact to be found by the jury. Smith v. Boston & M. R., 120 Mass. 490, 21 Am. Rep. 538; Ungericht v. State, 119 Ind. 379, 21 N. E. 1082, 12 Am. St. Rep. 419; State v. Knight, 29 W. Va. 340, 1 S. E. 569. *See "Statutes," Dec. Dig. (Key No.) § 176; Cent. Dig. § 255.*

[27] State ex rel. Campbell v. Superior Court of Pierce County, 25 Wash. 271, 65 Pac. 183. *See "Statutes," Dec. Dig. (Key No.) § 176; Cent. Dig. § 255.*

tribunal may be called upon either to ascertain, and then apply, the construction which the foreign law bears at home, or else to put its own construction upon it. Now the former of these questions is a question of fact; the latter is a question of law. The construction given to a statute of another state, whether by usage or by judicial decisions, is a part of the unwritten law of that state, and as such it may be proved by parol testimony, and must be found by the jury.[28] But when the existence and terms of the foreign law have been proved as facts, and there is no evidence as to the construction put upon it at home, or when for any reason that construction is not to be followed, but the trial court must construe the law, then there is presented a question with which the jury are not concerned, but it belongs exclusively to the court.[29]

[28] Dyer v. Smith, 12 Conn. 384; Kline v. Baker, 99 Mass. 253. But some of the cases appear to hold that if the evidence of the home interpretation of a foreign law consists of judicial decisions, such evidence is properly addressed to the court and not the jury. See Geoghegan v. Atlas Steam-Ship Co. (Com. Pl.) 10 N. Y. Supp. 121; Kline v. Baker, 99 Mass. 253. And see Christiansen v. William Graver Tank Works, 223 Ill. 142, 79 N. E. 97, affirming 126 Ill. App. 86. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. §§ 256, 307; "Courts," Dec. Dig. (Key No.) § 95; Cent. Dig. §§ 322, 323.*

[29] State v. Jackson, 13 N. C. 563; Cobb v. Griffith & Adams Sand, Gravel & Transportation Co., 87 Mo. 90. And see Kline v. Baker, 99 Mass. 253; Bremer v. Freeman, 10 Moore, P. C. 306; Di Sora v. Phillips, 10 H. L. Cas. 624; Molson's Bank v. Boardman, 47 Hun (N. Y.) 135; Ames v. McCamber, 124 Mass. 85; Shoe & Leather Nat. Bank v. Wood, 142 Mass. 563, 8 N. E. 753. Compare Holman v. King, 7 Metc. (Mass.) 384. *See "Statutes," Dec. Dig. (Key No.) § 176; Cent. Dig. § 255.*

CHAPTER II

CONSTRUCTION OF CONSTITUTIONS

7. Method of Interpretation.
8. Intent to be Sought.
9. Uniformity in Construction.
10. Effect to be Given to the Whole.
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12. Retrospective Operation Avoided.
13. Mandatory and Directory Provisions.
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METHOD OF INTERPRETATION

7. A constitution is not to be interpreted on narrow or technical principles, but liberally and on broad general lines, in order that it may accomplish the objects of its establishment and carry out the great principles of government.

"Narrow and technical reasoning," says Judge Cooley, "is misplaced when it is brought to bear upon an instrument framed by the people themselves, for themselves, and designed as a chart upon which every man, learned or unlearned, may be able to trace the leading principles of government." [1] The constitution "was intended for the benefit of the people, and must receive a liberal construction. A constitution is not to receive a technical construction, like a common-law instrument or a statute. It is to be interpreted so as to carry out the great principles of

[1] Cooley, Const. Lim. 59.

government, not to defeat them." [2] Constitutions, it is said in another case, "declare the organic law of a state; they deal with larger topics and are couched in broader phrase than legislative acts or private muniments. They do not undertake to define with minute precision in the manner of the latter, and hence their just interpretation is not always to be reached by the application of similar methods." [3] "A constitution of government does not, and cannot, from its nature, depend in any great degree upon mere verbal criticism, or upon the import of single words. Such criticism may not be wholly without use; it may sometimes illustrate or unfold the appropriate sense; but unless it stands well with the context and the subject-matter, it must yield to the latter. While, then, we may well resort to the meaning of single words to assist our inquiries, we should never forget that it is an instrument of government we are to construe, and that must be the truest exposition which best harmonizes with its design, its objects, and its general structure." [4] It has sometimes been

[2] Morrison v. Bachert, 112 Pa. 322, 5 Atl. 739; Commonwealth v. Clark, 7 Watts & S. (Pa.) 127; State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 South. 929; Cumberland Telephone & Telegraph Co. v. Hickman, 129 Ky. 220, 111 S. W. 311, 33 Ky. Law Rep. 730; Spratt v. Helena Power Transmission Co., 37 Mont. 60, 94 Pac. 631; State ex rel. Edwards v. Millar, 21 Okl. 448, 96 Pac. 747; Brummitt v. Ogden Waterworks Co., 33 Utah, 289, 93 Pac. 828; Nona Mills Co. v. Wingate, 51 Tex. Civ. App. 609, 113 S. W. 182. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

[3] Houseman v. Commonwealth ex rel. Tener, 100 Pa. 222. See, also, Greencastle Tp. in Putnam County v. Black, 5 Ind. 557. But compare State ex rel. Jury Com'rs v. City of New Orleans, 2 McGloin (La.) 46, where it is said that constitutions are to be interpreted according to the general rules of the law of interpretation, being in this respect upon the same footing as ordinary statutes, contracts, judgments, etc. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

[4] 1 Story, Const. § 455. And see Western Union Tel. Co. v. Railroad Commission of Louisiana, 120 La. 758, 45 South. 598, where the court observes that, although statutes are sometimes hastily drawn, and construction is necessary to give them effect, the language of a constitution is presumably selected with the utmost discrimination. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

contended that the construction of a constitution should be strict, because it is a grant of powers, and is, to that extent, in derogation of the inherent and natural powers of the people. But on this point it has been very justly observed: "All governments are founded upon a surrender of some natural rights, and they impose some restrictions. Therefore, in construing a constitution of government framed by the people for their own benefit and protection, for the preservation of their rights and property and liberty, where the delegated powers are not and cannot be used for the benefit of their rulers, who are but their temporary servants and agents, but are intended solely for the benefit of the people, no presumption arises of an intention to use the words of the constitution in the most restricted sense. The strict or the most extended sense, being equally within the letter, may be fairly held to be within their intention, as either shall best promote the very objects of the people in the grant, and as either shall best promote or secure their rights, property, or liberty. The words are not, indeed, to be stretched beyond their fair sense; but within that range, the rule of interpretation must be taken which best follows out the apparent intention. This is the mode, it is believed, universally adopted in construing the state constitutions. It has its origin in common sense. And it can never be an object of just jealousy, because the rulers can have no permanent interest in a free government distinct from that of the people, of whom they are a part, and to whom they are responsible." [5]

But it is here necessary to remark that a distinction must be taken, as regards the strictness or liberality of construction, between the constitution of a state and the Constitution of the United States, when either is considered as a grant of governmental powers. Under that aspect, it is only the former which is entitled to be liberally construed, in the fullest sense of the term. The federal constitution, in respect to its clauses which delegate powers to the general government, is to receive a reasonable and fair construction, but is not to be stretched beyond the plain mean-

[5] 1 Story, Const. § 413.

ing of its terms and the necessary implications arising therefrom. It should also be observed that it is not within the lawful powers of the courts, in any event, "to amend the constitution, under the color of construction, by interpolating provisions not suggested by any part of it. We cannot supply all omissions which we may believe have arisen from inadvertence on the part of the constitutional convention." [6]

INTENT TO BE SOUGHT

8. It is a cardinal rule in the interpretation of constitutions that the instrument must be so construed as to give effect to the intention of the people, who adopted it. This intention is to be sought in the constitution itself, and the apparent meaning of the words employed is to be taken as expressing it, except in cases where that assumption would lead to absurdity, ambiguity, or contradiction.

Where the meaning shown on the face of the words is definite and intelligible, the courts are not at liberty to look for another meaning, even though it should seem more probable or natural, but they must assume that the constitution means just what it says. "Whether we are considering an agreement between parties, a statute, or a constitution, with a view to its interpretation, the thing we are to seek is the thought which it expresses. To ascertain this, the first resort in all cases is to the natural signification of the words employed, in the order and grammatical arrangement in which the framers of the instrument have placed them. If, thus regarded, the words embody a definite meaning, which involves no absurdity and no contradiction between different parts of the same writing, then that meaning apparent upon the face of the instrument is the one which alone we are at liberty to say was intended

[6] Walker v. City of Cincinnati, 21 Ohio St. 14, 53, 8 Am. Rep. 24. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

to be conveyed. In such a case, there is no room for construction. That which the words declare is the meaning of the instrument, and neither courts nor legislatures have the right to add to, or take away from, that meaning." [7] But if the words of the constitution, thus taken, are devoid of meaning, or lead to an absurd conclusion, or are contradictory of other parts of the constitution, then it cannot be presumed that their prima facie import expresses the real intention. And in that case, the courts are to employ the process of construction to arrive at the real intention, by taking the words in such a sense as will give them a definite and sensible meaning, or reconcile them with the rest of the instrument. And this sense is to be determined by comparing the particular clause with other parts of the constitution, by considering the various meanings, vernacular or technical, which the words are capable of bearing, and by studying the facts of contemporary history and the purpose sought to be accomplished, and the benefit to be secured, or the evil to be remedied, by the provision in question.[8]

But deviating from the literal sense of the words employed in a constitution is a very dangerous proceeding, and one upon which the courts may embark only under the

[7] Newell v. People, 7 N. Y. 9, 97; City of Beardstown v. City of Virginia, 76 Ill. 34; City of Springfield v. Edwards, 84 Ill. 626; Hills v. City of Chicago, 60 Ill. 86; People v. May, 9 Colo. 80, 10 Pac. 641; Jackson v. State, 87 Md. 191, 39 Atl. 504; Donaldson v. Harvey, 3 Har. & McH. (Md.) 12; Western Union Tel. Co. v. Railroad Commission of Louisiana, 120 La. 758, 45 South. 598; Manthey v. Vincent, 145 Mich. 327, 108 N. W. 667; Attorney General v. State Board of Assessors, 143 Mich. 73, 106 N. W. 698; State v. Eldredge, 27 Utah, 477, 76 Pac. 337; Rasmussen v. Baker, 7 Wyo. 117, 50 Pac. 819, 38 L. R. A. 773; Keller v. State (Tex. Cr. App.) 87 S. W. 669, 1 L. R. A. (N. S.) 489; Powell v. Spackman, 7 Idaho, 692, 65 Pac. 503, 54 L. R. A. 378; Boca Mill Co. v. Curry, 154 Cal. 326, 97 Pac. 1117. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 13, 14; Cent. Dig. §§ 10, 11.*

[8] People v. Potter, 47 N. Y. 375; Taylor v. Taylor, 10 Minn. 107 (Gil. 81); State ex rel. Norvell-Shapleigh Hardware Co. v. Cook, 178 Mo. 189, 77 S. W. 559; Smith v. Grayson County, 18 Tex. Civ. App. 153, 44 S. W. 921. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

pressure of necessity, to avoid a plain absurdity or contradiction, and their power in this respect must be exercised with very great caution.[9] And the fear of disastrous consequences gives them no reason for declining to give effect to the constitution according to its apparent meaning when that meaning is obvious and involved in no obscurity; if such fears are justified, and unintended hardships or disasters follow, the remedy is with the people, who always have the power to amend the constitution.[10]

UNIFORMITY IN CONSTRUCTION

9. The construction of a constitutional provision is to be uniform.

The constitution cannot be made to mean different things at different times. Its interpretation should not fluctuate according to the changes in public sentiment or the supposed desirability of adjusting the fundamental rules to varying conditions or exigencies. The meaning of the constitution is fixed when it is adopted, and afterwards, when the courts are called upon to interpret it, they cannot assume that it bears any different meaning.[11] "The policy of one age may ill suit the wishes or the policy of another. The constitution is not to be subject to such fluctuations. It is to have a fixed, uniform, permanent construction. It should be, so far at least as human infirmity will allow, not dependent upon the passions or parties of particular times, but the same yesterday, to-day, and forever." [12]

[9] Taylor v. Taylor, 10 Minn. 107 (Gil. 81). *See "Constitutional Law," Dec. Dig. (Key No.) § 14; Cent. Dig. § 11.*

[10] Manthey v. Vincent, 145 Mich. 327, 108 N. W. 667. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 5–9, 14; Cent. Dig. §§ 2–8, 11.*

[11] People ex rel. Twitchell v. Blodgett, 13 Mich. 127. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

[12] 1 Story, Const. § 427.

EFFECT TO BE GIVEN TO THE WHOLE

10. In case of ambiguity, the whole constitution is to be examined in order to determine the meaning of any part; and the construction is to be such as to give effect to the entire instrument, and not to raise any conflict between its parts which can be avoided.[13]

An examination of other parts of the constitution will often enable the court to ascertain the sense in which the words in particular clauses were used. And this method of investigation must be resorted to before aid can be sought from extraneous sources. Moreover, a construction which raises a conflict between different parts of the constitution is not permissible when, by any reasonable construction, the parts may be made to harmonize.[14] Hence, where a word or phrase is used in the constitution in a plain and manifest sense, it is to receive the same interpretation when used in any other part, unless it clearly appears from the context that a different meaning should be applied to it.[15] But when the constitution speaks in plain language in reference to a particular matter, the

[13] Manly v. State, 7 Md. 135; State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 South. 929; State ex rel. Crow v. Hostetter, 137 Mo. 636, 39 S. W. 270, 38 L. R. A. 208, 59 Am. St. Rep. 515; Funkhouser v. Spahr, 102 Va. 306, 46 S. E. 378; Tazewell v. Herman, 108 Va. 416, 60 S. E. 767; State v. Harden, 62 W. Va. 313, 58 S. E. 715; State v. Kyle, 8 W. Va. 711; State ex rel. Wolfe v. Parmenter, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707; People ex rel. Mattison v. Nye, 9 Cal. App. 148, 98 Pac. 241; People ex rel. Williams Engineering & Contracting Co. v. Metz, 193 N. Y. 148, 85 N. E. 1070, 24 L. R. A. (N. S.) 201; Blackrock Copper Min. & Mill. Co. v. Tingey, 34 Utah, 369, 98 Pac. 180, 28 L. R. A. (N. S.) 255, 131 Am. St. Rep. 850. *See "Constitutional Law," Dec. Dig. (Key No.) § 15; Cent. Dig. § 9.*

[14] Cooley, Const. Lim. 58; Manly v. State, 7 Md. 135. *See "Constitutional Law," Dec. Dig. (Key No.) § 15; Cent. Dig. § 9.*

[15] Epping v. Columbus, 117 Ga. 263, 43 S. E. 803; State ex rel. Woodward v. Skeggs, 154 Ala. 249, 46 South. 268. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 14, 15; Cent. Dig. §§ 9, 11.*

courts have no right to place a different meaning on the words employed because the literal interpretation may happen to be inconsistent with other parts of the instrument in relation to other subjects.[16] And "it is by no means a correct rule of interpretation to construe the same word in the same sense wherever it occurs in the same instrument. It does not follow, either logically or grammatically, that because a word is found in one connection in the constitution with a definite sense, therefore the same sense is to be adopted in every other connection in which it occurs. This would be to suppose that the framers weighed only the force of single words, as philologists or critics, and not whole clauses and objects, as statesmen and practical reasoners." [17] And it must be remembered that a state constitution does not stand alone in regulating the frame of government, or defining the limitations of governmental powers. Just as a statute must be construed with reference to constitutional and statutory provisions on the same subject-matter, so the provisions of a state constitution must be construed with reference to the corresponding or related provisions of the federal constitution, treaties formed by the national authorities, and the acts of Congress, and must, if possible, be so interpreted as not to conflict with the same.[18] Where the constitution makes provision for contingencies apprehended, or for occasional or temporary needs, such provisions should not be so interpreted as to clash with the general design, but should be in harmonious subservience thereto, and if their terms conflict with those provisions which are made part of the essential framework of the general plan, and are of usual continuous and necessary operation, the former must yield and adapt themselves to the latter.[19] The bill of rights, commonly incorporated in state constitutions, is not to be interpreted by itself alone, according to its literal meaning.

[16] Cantwell v. Owens, 14 Md. 215. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 14, 15; Cent. Dig. §§ 9, 11.*

[17] 1 Story, Const. § 454.

[18] Endlich, Interp. § 523.

[19] People v. Potter, 47 N. Y. 375. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 15, 18; Cent. Dig. §§ 9, 13, 17.*

The bill of rights and the constitution together compose the form of government, and they must be interpreted as one instrument. The former announces principles on which the government about to be established will be based. If they differ, the constitution must be taken as a limitation or qualification of the general principles previously declared, according to the subject and the language employed.[20]

COMMON LAW AND PREVIOUS LEGISLATION

11. A constitution should be construed with reference to, but not overruled by, the doctrines of the common law and the legislation previously existing in the state.

Except in so far as it is superseded by the constitutions, the common law is generally in force in the United States. Hence the importance of comparing constitutional provisions, in order to arrive at the true meaning and effect, with the great body of the common law, both for the purpose of understanding the language employed and of measuring the changes and innovations designed to be introduced. But the constitution is superior to the common law, and is not to be understood as in any way controlled or limited by it. It is a familiar rule that a statute in contravention or derogation of the common law ought not to be extended by construction. And there is always a presumption against an unnecessary change of laws. Accordingly it has been held that when a new constitution makes a change in the pre-existing law, whether common law or statutory, the change is not to be extended by construction beyond the very terms of the constitution.[21] But this

[20] Mayor, etc., of Baltimore v. State ex rel. Board of Police of City of Baltimore, 15 Md. 376, 459, 74 Am. Dec. 572. Compare In re Dorsey, 7 Port. (Ala.) 293. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 12, 18; Cent. Dig. §§ 9, 13, 17.*

[21] Costigin v. Bond, 65 Md. 122, 3 Atl. 285. See, also, Mayor, etc., of Baltimore v. State ex rel. Board of Police of City of Baltimore,

is a rule which must be applied with great care. It should never be allowed to detract, in the slightest degree, from the actual meaning and intention of the constitution.

RETROSPECTIVE OPERATION AVOIDED

12. A constitutional provision should not be construed with a retrospective operation, unless that is the unmistakable intention of the words used or the obvious design of the authors.

It is the invariable rule that a statute will be so construed as to operate prospectively only, unless the words used, or the plain design of the framers of the law, being too clear to admit of any doubt, require that it should have a retrospective effect. This rule, with the very substantial reasons upon which it rests, will be considered in a later chapter. The same reasons apply equally to the interpretation of constitutional provisions. Hence, if the language employed admits of a substantial doubt on this point, the courts should not construe the provision retrospectively.[22] But if such an effect is manifestly intended, they are not at liberty to narrow the meaning of the constitution from any considerations of justice or expediency. The former part of this rule has not, indeed, been always accepted. In one of the cases it was said (though the remark was only obiter) that the rule against a retrospective interpretation has but little application, if any, to the interpretation of a

15 Md. 376, 74 Am. Dec. 572; Brown v. Fifield, 4 Mich. 322; Cooley, Const. Lim. 61. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 17, 18; Cent. Dig. §§ 13, 17.*

[22] Conyers v. Commissioners of Roads & Revenues of Bartow County, 116 Ga. 101, 42 S. E. 419; Town of Cherry Creek v. Becker, 123 N. Y. 161, 25 N. E. 369; Bronk v. Barckley, 13 App. Div. 72, 43 N. Y. Supp. 400; Farnsworth v. Lime Rock R. Co., 83 Me. 440, 22 Atl. 373; State ex rel. Scott v. Dirckx, 211 Mo. 568, 111 S. W. 1; Swift & Co. v. City of Newport News, 105 Va. 108, 52 S. E. 821, 3 L. R. A. (N. S.) 404; Arey v. Lindsey, 103 Va. 250, 48 S. E. 889; State v. Cox, 79 Kan. 530, 99 Pac. 1128. *See "Constitutional Law," Dec. Dig. (Key No.) § 23; Cent. Dig. § 20.*

constitution. "We are not," said the learned judge, "to interpret the constitution precisely as we would an act of the legislature. The convention was not obliged, like the legislative bodies to look carefully to the preservation of vested rights. It was competent to deal, subject to ratification by the people, and to the constitution of the federal government, with all private and social rights, and with all the existing laws and institutions of the state. If the convention had so willed, and the people had concurred, all the former charters and grants might have been annihilated. When, therefore, we are seeking for the true construction of a constitutional provision, we are constantly to bear in mind that its authors were not executing a delegated authority, limited by other constitutional restraints, but are to look upon them as the founders of a state, intent only upon establishing such principles as seemed best calculated to produce good government and promote the public happiness, at the expense of any and all existing institutions which might stand in their way." [23]

MANDATORY AND DIRECTORY PROVISIONS

13. The provisions of a constitution are almost invariably mandatory; it is only in extremely plain cases, or under the pressure of necessity, that they can be construed as merely directory.

It is not lightly to be presumed that any provision deemed essential to be incorporated in an instrument so solemn and enduring as a constitution, was designed to be merely in the nature of a direction, without imperative force. "It would, in a general sense, be a dangerous doctrine to announce that any of the provisions of the constitution may be obeyed or disregarded at the mere will or pleasure of the legislature, unless it is clear beyond all question that such was the intention of the framers of that

[23] In re Oliver Lee & Co.'s Bank, 21 N. Y. 9. *See "Constitutional Law," Dec. Dig. (Key. No.) §§ 11–21, 23; Cent. Dig. §§ 9–17, 20.*

instrument. It would seem to be a lowering of the proper dignity of the fundamental law to say that it descends to prescribing rules of order in unessential matters which may be followed or disregarded at pleasure." [24] As a rule, therefore, whenever the language used in a constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation; and whenever the language contains a grant of power, it is intended as a mandate, not a mere direction.[25] Nevertheless, there may be cases in which a constitutional provision should be held to be merely directory. Thus, where the contrary construction would lead to absurd, impossible, or mischievous consequences, it should not be followed. In Ohio, for example, where a clause of the Constitution required that every bill, on its passage through the Legislature, should "be fully and distinctly read on three different days," the court held that this provision might be taken as merely directory, and that its observance by the Legislature was to be taken as secured by their sense of duty and official oaths, and not by any supervisory power of the courts. "Any other construction, we incline to think, would lead to very absurd and alarming consequences. If it is in the power of every court (and if one has the power, every one has it) to inquire whether a bill that passed the assembly was 'fully,' and 'distinctly' read three times in each house, and to hold it invalid if, upon any reading, a word was accidentally omitted, or the reading was indistinct, it would obviously be impossible to know what is the statute law

[24] Sutherland, Stat. Constr. § 79. And see Parker v. State ex rel. Powell, 133 Ind. 178, 33 N. E. 119, 18 L. R. A. 567; Varney v. Justice, 86 Ky. 596, 6 S. W. 457; People v. Lawrence, 36 Barb. (N. Y.) 177; Carolina Grocery Co. v. Burnet, 61 S. C. 205, 39 S. E. 381, 58 L. R. A. 687; State v. Burrow, 119 Tenn. 376, 104 S. W. 526; Capito v. Topping, 65 W. Va. 587, 64 S. E. 845, 22 L. R. A. (N. S.) 1089. *See "Constitutional Law," Dec. Dig. (Key No.) § 35; Cent. Dig. § 34½.*

[25] Varney v. Justice, 86 Ky. 596, 6 S. W. 457; Hunt v. State, 22 Tex. App. 396, 3 S. W. 233; People v. Lawrence, 36 Barb. (N. Y.) 177. *See "Constitutional Law," Dec. Dig. (Key No.) § 35; Cent. Dig. § 34½.*

of the state." [26] And again, it must be remembered that a constitution is to receive a reasonable construction, and such as to carry out the great principles of government, and not to defeat them. Consequently, the principle of strict construction should not be allowed to nullify or frustrate the main objects of the constitution, especially in a newly constructed frame of government. For instance, "it was provided by the first article and third section of the federal constitution that the Senate should be composed of two members from each state, chosen for six years, and that 'immediately' after they should be assembled, they should be divided into three classes, in order that one-third of the body might be chosen every second year. Yet, on the principle of strict construction, a postponement of the division for a month or a day would have presented an insuperable obstacle to the organization of the government. Necessarily, the paramount rule of interpretation demands that such provisions be deemed only directory." [27]

IMPLICATIONS

14. Whatever is necessary to render effective any provision of a constitution, whether the same be a prohibition, or a restriction, or the grant of a power, must be deemed implied and intended in the provision itself.[28]

[26] Miller v. State, 3 Ohio St. 475; Pim v. Nicholson, 6 Ohio St. 176. And see Hill v. Boyland, 40 Miss. 618; McPherson v. Leonard, 29 Md. 377. *See "Constitutional Law," Dec. Dig. (Key No.) § 35; Cent. Dig. § 34½.*

[27] Commonwealth v. Clark, 7 Watts & S. (Pa.) 127. *See "Constitutional Law," Dec. Dig. (Key No.) § 35; Cent. Dig. § 34½.*

[28] Endlich, Interp. § 535; 1 Story, Const. § 430; Cooley, Const. Lim. 77. But see Cumberland Telephone & Telegraph Co. v. City of Hickman, 129 Ky. 220, 111 S. W. 311, 33 Ky. Law Rep. 730, holding that interpretations of the constitution by rules of implication are most hazardous, and should be resorted to only in those instances where the subject-matter and the language leave no doubt that the intended meaning of the clause under investigation may be reached in that way only and with approximate certainty. *See "Constitutional Law," Dec. Dig. (Key No.) § 12; Cent. Dig. § 9.*

The principal application of this rule is in respect to the grants of powers contained in the constitutions, which will be considered in the succeeding section. But it is also a rule of construction that "when the constitution defines the circumstances under which a right may be exercised or a penalty imposed, the specification is an implied prohibition against legislative interference to add to the condition or to extend the penalty to other cases. On this ground it has been held that where the constitution defines the qualifications of an officer, it is not in the power of the legislature to change or superadd to them, unless the power to do so is expressly or by necessary implication conferred by the constitution itself." [29] Moreover, the language of a constitution, which cannot enter into minute and detailed specifications to meet possible cases, is subject often to implied exceptions and qualifications, which depend upon the principles of reason, justice, or public policy. Thus, for instance, a constitutional provision giving to county auditors the exclusive right to fix the compensation for all services rendered to the county, should not be held to invest them with the power to fix the compensation for their own services.[30]

GRANTS OF POWERS

15. Where the constitution grants a power in general terms, the grant includes all such particular and auxiliary powers as may be necessary to make it effectual. Where the means for the exercise of a granted power are specified, all other means are understood to be excluded. Where the means are not specified, any means may be resorted to which are fairly and properly adapted to accomplish the object of the grant of power, if they do not unnecessarily interfere with existing interests or vested rights.

[29] Cooley, Const. Lim. 64, citing Thomas v. Owens, 4 Md. 189. *See "Constitutional Law," Dec. Dig. (Key No.) § 12; Cent. Dig. § 9.*

[30] People ex rel. Kennedy v. Gies, 25 Mich. 83. *See "Constitutional Law," Dec. Dig. (Key No.) § 12; Cent. Dig. § 9.*

"A constitution cannot, from its very nature, enter into a minute specification of all the minor powers naturally and obviously included in it and flowing from the great and important ones which are expressly granted. It is therefore established as a general rule that when a constitution gives a general power, or enjoins a duty, it also gives, by implication, every particular power necessary for the exercise of the one or the performance of the other. The implication under this rule, however, must be a necessary, not a conjectural or argumentative one." [31] And when a power is granted in general terms, the power is to be construed as coextensive with the terms, unless some clear restriction upon it is deducible, expressly or by implication, from the context.[32] A power, given in general terms, is not to be restricted to particular cases merely because it may be susceptible of abuse, and, if abused, may lead to mischievous consequences.[33] And on the other hand, a rule of equal importance is not to enlarge the construction of a given power beyond the fair scope of its terms merely because the restriction is inconvenient, impolitic, or even mischievous. Arguments drawn from impolicy or inconvenience ought to have no weight in this connection.[34] But "no construction of a given power is to be allowed which plainly defeats or impairs its avowed objects. If, therefore, the words are fairly susceptible of two interpretations, according to their common sense and use, the one of which would defeat one or all of the objects for which it was obviously given, and the other of which would preserve and promote all, the former interpretation ought to be rejected, and the latter be held the true interpretation. This rule results from the

[31] Field v. People ex rel. McClernand, 3 Ill. 79, 83; Parks v. West, 102 Tex. 11, 111 S. W. 726. But where the constitution confers upon a given court certain powers which it specially enumerates, they are all that the court will possess; and it will not be competent for the legislature either to add to or subtract from those powers. State v. Mace, 5 Md. 337. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 26, 27; Cent. Dig. §§ 30, 31.*

[32] Cooley, Const. Lim. 64; 1 Story, Const. § 424.

[33] 1 Story, Const. § 425.

[34] Id. § 426.

dictates of mere common sense; for every instrument ought to be so construed 'ut magis valeat quam pereat.' " [35]

Where, in a constitution, a power is granted, and the means for its exercise are also specifically granted, no other or different means or powers can be implied on the ground of greater convenience or efficiency.[36] If the means for the execution of the granted power are not specified, it should not fail for the want of such enumeration; but in that case it is evident that the depositary of the power will be invested with a discretion as to the choice of the means to be employed, the only restriction being that the means selected shall be fairly and properly adapted and appropriate to the exercise of the power, and shall involve no injustice or hardship which can reasonably be avoided. "When the means for carrying into effect any particular constitutional power are not specified, those means which interfere with established relations, and violate existing rights and obligations, as fixed by law, will not be presumed to be intended, unless they are strictly necessary." [37]

It should also be observed, in this connection, that while the foregoing rules are equally applicable to the Constitution of the United States and to those of the states, yet, considered as a grant of powers, the former is to be strictly construed, while the latter are to receive a liberal construction. For instance, the Congress of the United States can pass no laws but those which the Constitution authorizes, either expressly or by clear implication, while the legislature of a state has jurisdiction of all subjects on which its legislation is not prohibited.[38]

[35] Id. § 428.

[36] Field v. People ex rel. McClernand, 3 Ill. 79. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 26, 27; Cent. Dig. §§ 30, 31.*

[37] Commonwealth v. Downes, 24 Pick. (Mass.) 227. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 26, 27; Cent. Dig. §§ 30, 31.*

[38] Commonwealth v. Hartman, 17 Pa. 118; Welster v. Hade, 52 Pa. 474; Black, Const. Law (3d Ed.) 351. On the subject of the construction of the Constitution of the United States with reference to its grants of legislative power, see Black, Const. Law (3d Ed.) 202, 284, 287. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 26, 27; Cent. Dig. §§ 30, 31.*

POPULAR AND TECHNICAL SENSE OF WORDS

16. The words employed in a constitution are to be taken in their natural and popular sense, unless they are technical legal terms, in which case they are to be taken in their technical signification.

It is a general rule that the words of a constitution are to be understood in the sense in which they are popularly employed, unless the context or the very nature of the subject indicates otherwise.[39] "Every word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it. Constitutions are not designed for metaphysical or logical subtilties, for niceties of expression, for critical propriety, for elaborate shades of meaning, or for the exercise of philosophical acuteness or judicial research. They are instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings. The people make them, the people adopt them, the people must be supposed to read them, with the help of common sense, and cannot be presumed to admit in them any recondite meaning or any extraordinary gloss." [40] Where a word having a technical (nonlegal) meaning, as well as a popular meaning, is used in a constitution, the courts will accord to it its popular signification, unless it is apparent, from the nature of the subject or the connection in which it appears, that it was

[39] Greencastle Tp. in Putnam County v. Black, 5 Ind. 557; People v. Fancher, 50 N. Y. 288; Epping v. Columbus, 117 Ga. 263, 43 S. E. 803; Hamilton Nat. Bank v. American Loan & Trust Co., 66 Neb. 67, 92 N. W. 189; Swift & Co. v. City of Newport News, 105 Va. 108, 52 S. E. 821, 3 L. R. A. (N. S.) 404; The Huntress, Dav. 82, Fed. Cas. No. 6,914; State v. Mace, 5 Md. 337; Manly v. State, 7 Md. 135. *See "Constitutional Law," Dec. Dig. (Key No.) § 14; Cent. Dig. § 11.*

[40] 1 Story, Const. § 451.

intended to be used in its technical sense.[41] But there are many technical legal terms employed in the constitutions. And if the technical signification of these words differs from the vernacular, the former is to be preferred in construction. This is because a constitution is a law, and is to be interpreted as such. "No one would doubt," says Story, "when the constitution has declared that 'the privilege of the writ of habeas corpus shall not be suspended,' unless under peculiar circumstances, that it referred, not to every sort of writ which has acquired that name, but to that which has been emphatically so called, on account of its remedial power to free a party from arbitrary imprisonment. So again, when it declares that in suits at 'common law' the right of trial by jury shall be preserved, though the phrase 'common law' admits of different meanings, no one can doubt that it is used in a technical sense." [42] And this rule is particularly true of the terms derived from Magna Charta and the other great English charters, which are to be interpreted in the light of history, and have acquired a fixed and exact technical meaning from the expositions of the courts and the understanding of the people. But where the constitution uses technical terms of law and jurisprudence, which are common to our law and the law of England, if there is a difference of signification in the two countries, the meaning which they bear in this country is to be preferred.[43]

PREAMBLE AND TITLES

17. The preamble to a constitution and the titles of its several articles or sections may furnish some evidence of its meaning and intention; but arguments drawn therefrom are entitled to very little weight.

[41] Weill v. Kenfield, 54 Cal. 111. *See "Constitutional Law," Dec. Dig. (Key No.) § 14; Cent. Dig. § 11.*

[42] 1 Story, Const. § 453.

[43] The Huntress, Dav. 82, Fed. Cas. No. 6,914. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 14, 17; Cent. Dig. §§ 11, 13.*

"It is evident that only in the most general way can the preamble of a constitution influence the construction of its provisions. As affecting the general character of the instrument, it has, indeed, been resorted to. The weight attached to the phrase 'We, the people,' in the preamble of the federal constitution, and the arguments based upon it, are a familiar instance of this species of construction." [44] And "scarcely any significance can be attached to the wording of the captions or titles of the several articles of the constitution. At most, they do not profess to indicate more than the general character of the article to which they are prefixed. That they are intended as critical and precise definitions of the subject-matter of the articles, or as exercising restraining limitations upon the clear expressions therein contained, cannot be pretended." [45]

INJUSTICE AND INCONVENIENCE

18. It is not permissible to disobey, or to construe into nothingness, a provision of the constitution merely because it may appear to work injustice, or to lead to harsh or obnoxious consequences or invidious and unmerited discriminations, and still less weight should be attached to the argument from mere inconvenience.

In the construction or interpretation of a constitution, the courts have nothing to do with the argument from inconvenience. It is their duty to declare what the constitution has said. And while it will not be presumed that the framers of the constitution intended to produce unjust, oppressive, or invidious results, yet if the meaning of the instrument is clear and unambiguous, or is plainly indicated by internal evidence, the courts are not at liberty to disregard this obvious meaning or to depart from it, on any con-

[44] Endlich, Interp. § 511.

[45] Houseman v. Commonwealth ex rel. Tener, 100 Pa. 222. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 12, 15; Cent. Dig. § 9.*

sideration of the consequences which may follow.[46] "The hardships and inconveniences resulting from this construction are urged upon our attention," said the court in Colorado in a recent case. But "to such appeals the language of the courts is uniform. The province of the judiciary is not to make the law, but to construe it. The meaning of a constitutional provision being plain, it must stand, be recognized, and obeyed, as the supreme law of the land." [47] At the same time, "we do not say that if a clause should be found in a constitution which should appear at first blush to demand a construction leading to monstrous and absurd consequences, it might not be the duty of the court to question and cross-question such clause closely, with a view to discover in it, if possible, some other meaning more consistent with the general purposes and aims of these instruments." [48]

But where the purpose and intent of the framers of the constitution are clearly expressed, they should be followed by the courts, without regard to any changes in public opinion on questions of policy or of the inconvenience resulting from following the constitution.[49] It is impossible to insist too strongly on this principle. A constitution may become antiquated. Its somewhat primitive provisions and arrangements may be regarded as no longer adequate to the efficient administration of government. New political theories may have come into existence and may have been generally accepted. The increasing complexity of modern life, on its industrial, commercial, and social sides, may appear to require a new order of fundamental rules and principles. The distribution of powers and functions, as between the

[46] Greencastle Tp. in Putnam County v. Black, 5 Ind. 557; Weill v. Kenfield, 54 Cal. 111; Wayne County v. City of Detroit, 17 Mich. 390; Oakley v. Aspinwall, 3 N. Y. 547, 568. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

[47] People v. May, 9 Colo. 80, 10 Pac. 641. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21, 45; Cent. Dig. §§ 9–17, 42.*

[48] Cooley, Const. Lim. 73.

[49] Keller v. State (Tex. Cr. App.) 87 S. W. 669, 1 L. R. A. (N. S.) 489. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

several departments of the government, or as between the constituent members of the state or nation, may seem to be no longer adapted to the successful realization either of the ideals of the people themselves or the policies or plans of their executive magistrates or their legislative assemblies. From any or all of these causes real hardships may result, to say nothing of hindrances and obstructions, if the courts persist in interpreting the constitution according to its plain and literal import. But that is their imperative duty. A constitution is not pliable. The people that made it may always revise and amend it. But courts would be flagrantly unfaithful to their high trust if they allowed their views of the meaning of the constitution to fluctuate with changes in popular sentiment, or bend to the wishes of either the executive or the legislative branch of the government.

EXTRANEOUS AIDS IN CONSTRUCTION

19. If an ambiguity exists which cannot be cleared up by a consideration of the constitution itself, then, in order to determine its meaning and purpose, resort may be had to extraneous facts, such as the prior state of the law, the evil to be remedied, the circumstances of contemporary history, or the discussions of the constitutional convention.

When the text of a constitutional provision is not ambiguous, the courts, in construing it, are not at liberty to search for its meaning beyond the instrument itself. If the text is ambiguous, the endeavor must first be made to arrive at its meaning from other parts of the same instrument. It is not until the means of solution afforded by the whole constitution have been exhausted without success that the courts are justified in calling outside facts or considerations to their aid. But when this becomes necessary, it is permissible to inquire into the prior state of the law, the previous and contemporary history of the people, the circumstances attending the foundation of the constitution, the evil intended to be remedied or the benefit sought to be se-

cured by the provision in question, as well as broad considerations of expediency. The object herein is to ascertain the reason which induced the framers of the constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order so to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.[50] "It is regarded as appropriate for the courts, and as a matter entitled to their most careful consideration, in giving a construction to the Constitution [of the United States] to look back at the situation of the country at the time and antecedent to the time of its adoption, to look at its then existing institutions, at the existence and operation of the then state governments, at the powers and workings of the old Confederation, and at all other circumstances which had a tendency to produce or obstruct its formation and ratification; and it is also held that contemporary history and contemporary interpretation may be called in to aid in arriving at just conclusions." [51] Yet it is very necessary to remember that the plain and obvious meaning of the constitution is not to be overridden by considerations such as these; nor should the purpose and significance of constitutional provisions be sought alone in the facts of antecedent history. "It will not do to say that an actual, existing, antecedent mischief is essential to support a constitutional limitation or an intent to limit; or that the absence of such an actual mischief excludes an intention to limit. On the other hand, it is safe to say that

[50] Maxwell v. Dow, 176 U. S. 581, 20 Sup. Ct. 448, 44 L. Ed. 597; State ex rel. Robertson v. McGough, 118 Ala. 159, 24 South. 395; State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 South. 929; Toncray v. Budge, 14 Idaho, 621, 95 Pac. 26; Halsey v. City of Belle Plaine, 128 Iowa, 467, 104 N. W. 494; Thompson v. Kidder, 74 N. H. 89, 65 Atl. 392; Funkhouser v. Spahr, 102 Va. 306, 46 S. E. 378; Smith v. St. Paul, M. & M. Ry. Co., 39 Wash. 355, 81 Pac. 840, 70 L. R. A. 1018, 109 Am. St. Rep. 889; Mayor, etc., of Baltimore v. State ex rel. Board of Police of City of Baltimore, 15 Md. 376, 74 Am. Dec. 572; Cronise v. Cronise, 54 Pa. 255; Cooper v. Utah Light & R. Co., 35 Utah, 570, 102 Pac. 202. *See "Constitutional Law," Dec. Dig. (Key No.) § 16; Cent. Dig. §§ 12, 16.*

[51] Potter's Dwarris on Statutes, 657, citing Stuart v. Laird, 1 Cranch, 309, 2 L. Ed. 115.

wherever there is a power liable to be abused, there is to be found a legislative motive for restraint. The multitudinous restraints of all constitutions proceed largely against possible mischiefs. To leave powers unlimited where there is great temptation to abuse is to invite abuse." [52]

In order to arrive at the reason and purpose of the constitution, it is also permissible to consult the debates and proceedings of the constitutional convention which framed the constitution. But it must be remembered that these are never of binding force, or of anything more than persuasive value. They may throw a useful light upon the purpose sought to be accomplished or upon the meaning attached to the words employed, or they may not. The courts are at liberty to avail themselves of any light derivable from such sources, but are not bound to adopt it as the sole ground of their decision.[53]

[52] People v. May, 9 Colo. 80, 10 Pac. 641. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 11–21; Cent. Dig. §§ 9–17.*

[53] See City of Springfield v. Edwards, 84 Ill. 643; Coutant v. People, 11 Wend. (N. Y.) 511; People v. May, 9 Colo. 80, 10 Pac. 641; People ex rel. Kennedy v. Gies, 25 Mich. 83; Taylor v. Taylor, 10 Minn. 107 (Gil. 81); State v. Fountain, 6 Pennewill (Del.) 520, 69 Atl. 926; Epping v. Columbus, 117 Ga. 263, 43 S. E. 803; Sanipoli v. Pleasant Valley Coal Co., 31 Utah, 114, 86 Pac. 865; State v. Norman, 16 Utah, 457, 52 Pac. 986. In the case of Commonwealth v. Balph, 111 Pa. 365, 3 Atl. 220, the court said that the debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." On the other hand, in People v. May, 9 Colo. 80, 10 Pac. 641, the court took judicial notice of an address to the people which had been issued by the constitutional convention upon its adjournment, wherein that body called public attention to the changes made by the new constitution, and explained the reasons for them, and their meaning. And this address was allowed to have some weight in inclining the court to a certain construction of one of the clauses of the constitution therein referred to. *See "Constitutional Law," Dec. Dig. (Key No.) § 16; Cent. Dig. §§ 12, 16.*

CONTEMPORARY AND PRACTICAL CONSTRUCTION

20. The contemporary construction of the constitution, especially if universally adopted, and also its practical construction, especially if acquiesced in for a long period of time, are valuable aids in determining its meaning and intention in cases of doubt; but these aids must be resorted to with caution and reserve, and they can never be allowed to abrogate, contradict, enlarge, or restrict the plain and obvious meaning of the text.[54]

By contemporary construction is meant the construction put upon the language or meaning of a constitution, at the time of its adoption, or shortly thereafter, by members of the convention which framed it or by other learned men who expressed their opinions in that regard publicly, though not judicially. It is properly resorted to to illustrate and confirm the text, to explain a doubtful phrase, or to expound an obscure clause. And the credit to which it

[54] Fairbank v. United States, 181 U. S. 283, 21 Sup. Ct. 648, 45 L. Ed. 862; McPhee & McGinnity Co. v. Union Pac. R. Co., 158 Fed. 5, 87 C. C. A. 619; Knight v. Shelton (C. C.) 134 Fed. 423; Levin v. United States, 128 Fed. 826, 63 C. C. A. 476; Griffin v. Rhoton, 85 Ark. 89, 107 S. W. 380; Board of Railroad Com'rs v. Market St. R. Co., 132 Cal. 677, 64 Pac. 1065; City Council of City and County of Denver v. Board of Com'rs of Adams County, 33 Colo. 1, 77 Pac. 858; People v. May, 9 Colo. 80, 10 Pac. 641; Cook County v. Healy, 222 Ill. 310, 78 N. E. 623; City of Terre Haute v. Evansville & T. H. R. Co., 149 Ind. 174, 46 N. E. 77, 37 L. R. A. 189; Collins v. Henderson, 11 Bush (Ky.) 74; Victoria Lumber Co. v. Rives, 115 La. 996, 40 South. 382; State v. Sheldon, 78 Neb. 552, 111 N. W. 372; State ex rel. Polk v. Galusha, 74 Neb. 188, 104 N. W. 197; Kenney v. Hudspeth, 59 N. J. Law, 504, 37 Atl. 67; Wallace v. Board of Equalization, 47 Or. 584, 86 Pac. 365; State ex rel. Barber v. Parler, 52 S. C. 207, 29 S. E. 651; State ex rel. Wells v. Tingey, 24 Utah, 225, 67 Pac. 33; State v. Harden, 62 W. Va. 313, 58 S. E. 715; Boca Mill Co. v. Curry, 154 Cal. 326, 97 Pac. 1117; People ex rel. Mattison v. Nye, 9 Cal. App. 148, 98 Pac. 241; City of New York v. New York City Ry. Co., 193 N. Y. 543, 86 N. E. 565. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 19, 20; Cent. Dig. §§ 14, 15.*

is entitled is in proportion to the uniformity and universality of that construction, and the known ability and talents of those by whom it was given. But it is to be resorted to with much qualification and reserve. "It can never abrogate the text; it can never fritter away its obvious meaning; it can never narrow down its true limitations; it can never enlarge its natural boundaries." "Nothing but the text itself was adopted by the people. And it would certainly be a most extravagant doctrine to give to any commentary then made, and, a fortiori, to any commentary since made, under a very different posture of opinion and feeling, an authority which should operate as an absolute limit upon the text, or should supersede its natural and just interpretation." [55]

By the practical construction of the constitution is meant the construction put upon it by the legislative body, which is charged with the making of laws in accordance with the constitution, or by the officers of the executive department, whose function is to put into execution the constitution and the laws. "Where there has been a practical construction, which has been acquiesced in for a considerable period, considerations in favor of adhering to this construction sometimes present themselves to the courts with a plausibility and force which it is not easy to resist. Indeed, where a particular construction has been generally accepted as correct, and especially when this has occurred contemporaneously with the adoption of the constitution, and by those who had opportunity to understand the intention of the instrument, it is not to be denied that a strong presumption exists that the construction rightly interprets the intention. And where this has been given by officers in the discharge of their official duty, and rights have accrued in reliance upon it, which would be divested by a decision that the construction was erroneous, the argument ab inconvenienti is sometimes allowed to have very great weight." [56] And sim-

[55] 1 Story, Const. §§ 406, 407; People v. May, 9 Colo. 80, 10 Pac. 641. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 19, 20; Cent. Dig. §§ 14, 15.*

[56] Cooley, Const. Lim. 67, citing Stuart v. Laird, 1 Cranch, 299, 2 L. Ed. 115; Martin v. Hunter, 1 Wheat. 304, 4 L. Ed. 97; Cohens v.

ilar respect will be paid to a long, constant, and uniform practical construction of the constitution by the legislature, more especially in relation to those provisions of it which deal with the legislative rights, powers, and duties.[57]

PROVISIONS FROM OTHER CONSTITUTIONS

21. Where a clause or provision in a constitution, which has received a settled judicial construction, is adopted in the same words by the framers of another constitution, it will be presumed that the construction thereof was likewise adopted.

This rule applies to the case where the constitution of one state copies a clause or provision from the constitution of another state, and also to the case where a new or revised constitution retains a clause or provision from the superseded constitution. In either such case, the courts will presume that the clause or provision was adopted with a knowledge of its settled judicial construction and with the intention that it should be understood in accordance with that construction.[58] And the same principle applies, where it can naturally be applied, to the case of a single term or

Virginia, 6 Wheat. 264, 5 L. Ed. 257; Bank of United States v. Halstead, 10 Wheat. 51, 6 L. Ed. 264; Ogden v. Saunders, 12 Wheat. 290, 6 L. Ed. 606; Minor v. Happersett, 21 Wall. 162, 22 L. Ed. 627. And see McPherson v. Blacker, 146 U. S. 1, 13 Sup. Ct. 3, 36 L. Ed. 869. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 19, 20; Cent. Dig. §§ 14, 15.*

[57] Mayor, etc., of Baltimore v. State ex rel. Board of Police of City of Baltimore, 15 Md. 376, 458, 74 Am. Dec. 572. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 19, 20; Cent. Dig. §§ 14, 15.*

[58] Alabama Girls' Industrial School v. Reynolds, 143 Ala. 579, 42 South. 114; Alford v. Hicks, 142 Ala. 355, 38 South. 752; Ex parte Roundtree, 51 Ala. 42; Lace v. People, 43 Colo. 199, 95 Pac. 302; McIntyre v. State, 170 Ind. 163, 83 N. E. 1005; Jenkins v. Ewin, 8 Heisk. (Tenn.) 456; Norfolk & Portsmouth Traction Co. v. Ellington's Adm'r, 108 Va. 245, 61 S. E. 779, 17 L. R. A. (N. S.) 117; Norfolk & W. R. Co. v. Cheatwood's Adm'x, 103 Va. 356, 49 S. E. 489; Western Union Tel. Co. v. Julian (C. C.) 169 Fed. 166. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 18, 21; Cent. Dig. §§ 13, 17.*

phrase thus transcribed from one constitution to another.[59] Moreover, "clauses that have been eliminated from a constitution by amendment may be referred to in aid of the interpretation of others originally associated with them and remaining in force. And with equal propriety, the differences between the provisions of a new constitution and those of a previous one, and the construction placed upon the latter when in force, may be regarded by the courts in ascertaining the purpose and real meaning of the new provisions. Conversely, identity of language in the old and new constitutions may determine the construction of the latter in accordance with the construction placed upon the former." [60]

SCHEDULE

22. The office of a schedule to a constitution is temporary only, and its provisions will be understood as merely transitory, wherever that construction is logically possible. The schedule should not be allowed to abrogate or contradict the provisions of the permanent part of the constitution.

A schedule is a statement annexed to a constitution newly adopted by a state, in which are described at length the particulars in which it differs from the former constitution, and which contains provisions for the adjustment of matters affected by the change from the old to the new constitution. "The schedule of a constitution is a temporary provision for the preparatory machinery necessary to put the principles of the same in motion without disorder or collision. It forms, indeed, a part of the constitution, so far as its temporary purposes go, and to that extent is of equal authority with the provisions in the body of the instrument upon the various departments of the state. But its uses are temporary and auxiliary, and its purpose is not

[59] Ex parte Roundtree, 51 Ala. 42; Jenkins v. Ewin, 8 Heisk. (Tenn.) 456; Commissioners of Leavenworth County v. Miller, 7 Kan. 479, 12 Am. Rep. 425; Daily v. Swope, 47 Miss. 367. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 18, 21; Cent. Dig. §§ 13, 17.*

[60] Endlich, Interp. § 517.

to control the principles enunciated in the constitution itself, but to carry the whole into effect without break or interval." [61] If the schedule contains a provision on a certain subject, while the body of the constitution makes no reference thereto, it cannot be understood that the clause in the schedule was designed to supply permanently the omission in the constitution. Rather it will be presumed that the omission in the constitution was intentional and not a mere oversight, and that the provision in the schedule was meant to apply only to the state of affairs existing under the old constitution, and only until the same should be adjusted to the working of the new constitution.[62]

PRINCIPLE OF STARE DECISIS

23. The principle of stare decisis applies with special force to the construction of constitutions, and an interpretation once deliberately put upon the provisions of such an instrument should not be departed from without grave reasons.

The stability of many of the most important institutions of society depends upon the permanence, as well as the certainty, of the construction placed by the judiciary upon the fundamental law. Hence, when the meaning of the constitution upon a doubtful question has been once carefully considered and judicially decided, every reason is in favor of a steady adherence to the authoritative interpretation, and especially is this so when the question is not simply as to the constitutionality of a law, but involves the validity of contracts, the protection of vested interests, the rights of innocent parties, or the permanence of a rule of property.[63]

[61] Endlich. Interp. § 513; Commonwealth v. Clark, 7 Watts & S. (Pa.) 127; State ex rel. Attorney General v. Taylor, 15 Ohio St. 137; State ex rel. Polk v. Galusha, 74 Neb. 188, 104 N. W. 197; Arie v. State, 23 Okl. 166, 100 Pac. 23. *See "Constitutional Law," Dec. Dig. (Key No.) § 24; Cent. Dig. §§ 21–29.*

[62] State ex rel. Attorney General v. Taylor, 15 Ohio St. 137. *See "Constitutional Law," Dec. Dig. (Key No.) § 24; Cent. Dig. §§ 21–29.*

[63] Maddox v. Graham, 2 Metc. (Ky.) 56. *See "Courts," Dec. Dig. (Key No.) §§ 90, 95; Cent. Dig. §§ 317, 323, 325.*

CHAPTER III

GENERAL PRINCIPLES OF STATUTORY CONSTRUCTION

24–27. Intention of Legislature—Literal Interpretation.
28. Equitable Construction.
29–32. Spirit and Reason of the Law.
33. Scope and Purpose of the Act.
34. Casus Omissus.
35. Implications in Statutes.
36. When Government is Bound by Statutes.

INTENTION OF LEGISLATURE—LITERAL INTERPRETATION

24. The object of all interpretation and construction of statutes is to ascertain the meaning and intention of the legislature, to the end that the same may be enforced.

25. This meaning and intention must be sought first of all in the language of the statute itself. For it must be presumed that the means employed by the legislature to express its will are adequate to the purpose and do express that will correctly.

26. If the language of the statute is plain and free from ambiguity, and expresses a single, definite, and sensible meaning, that meaning is conclusively presumed to be the meaning which the legislature intended to convey. In other words, the statute must be interpreted literally. Even though the court should be convinced that some other meaning was really intended by the law-making power, and even though the literal interpretation should defeat the very purposes of the enactment, still the explicit declaration of the legislature is the law, and the courts must not depart from it.

27. If the language of the statute is ambiguous, or lacks precision, or is fairly susceptible of two or more

interpretations, the intended meaning of it must be sought by the aid of all pertinent and admissible considerations. But here, as before, the object of the search is the meaning and intention of the legislature, and the court is not at liberty, merely because it has a choice between two constructions, to substitute for the will of the legislature its own ideas as to the justice, expediency, or policy of the law.

The Cardinal Rule

The foregoing paragraphs are intended to express in categorical form the one fundamental and unalterable rule of statutory construction—a rule which at once defines the office of the judiciary and marks the boundary of their legitimate authority—that the whole object of all interpretation is to seek out and enforce the actual meaning and intention of the law-making body. We are not to regard the canons of construction as a set of arbitrary rules which are to be applied to all statutes indifferently, and which may or may not result in giving to the statute a meaning and effect consonant to the purpose of those who framed it. On the contrary, all these rules are auxiliary and subsidiary to the cardinal principle of true and legitimate interpretation, to be resorted to only in cases of doubt and ambiguity, and all admissible and valuable only in so far as they aid the courts in discerning and making clear the legislative intention. The first endeavor must be to ascertain this intention from the language employed in the act; and if this language is plain and free from obscurity, it must be taken as meaning exactly what it says, whatever may be the consequences. In this case there is neither room nor occasion for applying any rules of construction. But if the legislature has clothed its will in obscure and doubtful terms, the courts may use any and all proper means of discovering the intended sense. But this does not free them from the obligation of giving effect to what the legislature meant to enact, nor permit them, by construction, to frame a statute expressive of their own notions of justice, wisdom, or expediency. The endeavor must still be to search

out the true purpose and intention of the legislature, and that only. This basic rule has sometimes been prescribed by state legislatures in the form of a statute. But it originated with the courts themselves, is universally recognized, is constantly stated by them as the basis for their action in matters of this kind, and is supported by the unanimous voice of the authorities.[1]

[1] Sunflower Lumber Co. v. Turner Supply Co., 158 Ala. 191, 48 South. 510, 132 Am. St. Rep. 20; Bartlett v. Morris, 9 Port. (Ala.) 266; St. Louis, I. M. & S. Ry. Co. v. Batesville & W. Tel. Co., 86 Ark. 300, 110 S. W. 1047; Dekelt v. People, 44 Colo. 525, 99 Pac. 330; Troy Laundry & Mach. Co. v. City of Denver, 11 Colo. App. 368, 53 Pac. 256; Farrel Foundry v. Dart, 26 Conn. 376; Tynan v. Walker, 35 Cal. 634, 95 Am. Dec. 152; Ezekiel v. Dixon, 3 Ga. 146; Empire Copper Co. v. Henderson, 15 Idaho, 635, 99 Pac. 127; Idaho Mut. Co-Operative Ins. Co. v. Myer, 10 Idaho, 294, 77 Pac. 628; People v. Willison, 237 Ill. 584, 86 N. E. 1094; Struthers v. People, 116 Ill. App. 481; Andel v. People, 106 Ill. App. 558; Cleveland, C., C. & St. L. Ry. Co. v. Baker, 106 Ill. App. 500; State v. Barrett, 172 Ind. 169, 87 N. E. 7; State v. Weller, 171 Ind. 53, 85 N. E. 761; Allison v. Hubbell, 17 Ind. 559; Barber Asphalt Pav. Co. v. Edgerton, 125 Ind. 455, 25 N. E. 436; Parvin v. Wimberg, 130 Ind. 561, 30 N. E. 790, 15 L. R. A. 775, 30 Am. St. Rep. 254; State Board of Tax Com'rs v. Holliday, 150 Ind. 216, 49 N. E. 14, 42 L. R. A. 826; Simington v. State, 5 Ind. 479; Jones v. Leeds, 41 Ind. App. 164, 83 N. E. 526; Noble v. State, 1 G. Greene (Iowa) 325; Howard v. Emmet County, 140 Iowa, 527, 118 N. W. 882; State v. Bancroft, 22 Kan. 170; Grinstead v. Kirby, 110 S. W. 247, 33 Ky. Law Rep. 287; State ex rel. Forman v. City of New Orleans, McGloin (La.) 47; Pearce v. Atwood, 13 Mass. 324; Doane v. Phillips, 12 Pick. (Mass,) 223; People ex rel. Parsons v. Wayne County Circuit Judge, 37 Mich. 287; Albert v. Gibson, 141 Mich. 698, 105 N. W. 19; Koch v. Bridges, 45 Miss. 247; Armstrong v. Modern Brotherhood of America, 132 Mo. App. 171, 112 S. W. 24; Grimes v. Reynolds, 94 Mo. App. 576, 68 S. W. 588; State ex inf. Major ex rel. Sikes v. Williams, 222 Mo. 268, 121 S. W. 64; State ex rel. Eaton v. Gmelich, 208 Mo. 152, 106 S. W. 618; State ex rel. Walker v. Corkins, 123 Mo. 56, 27 S. W. 363; Bowerman v. Lackawanna Min. Co., 98 Mo. App. 308, 71 S. W. 1062; Little v. State, 60 Neb. 749, 84 N. W. 248, 51 L. R. A. 717; State ex rel. Harris v. Hanson, 80 Neb. 738, 117 N. W. 412; Ex parte Pittman, 31 Nev. 43, 99 Pac. 700, 22 L. R. A. (N. S.) 266; State ex rel. Board of Water Com'rs of City of Rahway v. Brewster, 42 N. J. Law, 125; Douglass v. Board of Chosen Freeholders of Essex County, 38 N. J. Law, 214; Hyatt v. Taylor, 42 N. Y. 258; Benton v. Wickwire, 54 N. Y. 226; Johnson v. Hudson River R. Co., 49 N. Y. 455; Board of Sup'rs of Niagara

Language of Statute as Expressive of Legislative Intent

The process of interpreting and applying a statute must begin with the assumption that the purpose and meaning of the legislature are correctly and definitely expressed by the language employed in the act; and the intention of the law-making body is first of all to be sought in the words of the statute, taking them in their natural and ordinary sense—words of common use in their commonly accepted signification and technical terms in their proper technical sense—and if, as thus read, they convey a clear and definite meaning, there is neither necessity nor justification for re-

County v. People, 7 Hill (N. Y.) 504; People ex rel. McNeile v. Glynn, 128 App. Div. 257, 112 N. Y. Supp. 695; State v. Scarborough, 110 N. C. 232, 14 S. E. 737; McLeod v. Board of Com'rs of Town of Carthage, 148 N. C. 77, 61 S. E. 605; Blair v. Coakley, 136 N. C. 405, 48 S. E. 804; State v. Barco, 150 N. C. 792, 63 S. E. 673; State v. Burr, 16 N. D. 581, 113 N. W. 705; Territory ex rel. Sampson v. Clark, 2 Okl. 82, 35 Pac. 882; Ruhland v. Waterman, 29 R. I. 365, 71 Atl. 450; State v. Stephenson, 2 Bailey (S. C.) 334; Fremont, E. & M. V. R. Co. v. Pennington County, 22 S. D. 202, 116 N. W. 75; State v. Third Judicial Dist. Court for Salt Lake County (Utah) 104 Pac. 750; State ex rel. Great Northern R. Co. v. Washington Railroad Commission, 52 Wash. 33, 100 Pac. 184; Tsutakawa v. Kumamoto, 53 Wash. 231, 101 Pac. 869; United States v. Hartwell, 6 Wall. 385, 18 L. Ed. 830; Gardner v. Collins, 2 Pet. 58, 7 L. Ed. 347; United States v. Warner, 4 McLean, 463, Fed. Cas. No. 16,643; United States v. Ragsdale, Hempst. 479, Fed. Cas. No. 16,113; Ogden v. Strong, 2 Paine, 584, Fed. Cas. No. 10,460; United States v. Colorado & N. W. R. Co., 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (N. S.) 167; Stevens v. Nave-McCord Mercantile Co., 150 Fed. 71, 80 C. C. A. 25; King v. Inhabitants of Stoke Damerel, 7 Barn. & C. 563; Inhabitants of Orono v. Bangor Ry. & Electric Co., 105 Me. 429, 74 Atl. 1022; Burke v. State, 64 Misc. Rep. 558, 119 N. Y. Supp. 1089; City of Birmingham v. Southern Express Co., 164 Ala. 529, 51 South. 159; Rudolph Kleybolte & Co. v. Black Mountain Timber Co., 151 N. C. 635, 66 S. E. 663; People ex rel. Hunt v. Lane, 196 N. Y. 520, 89 N. E. 1108; Burton v. Union Pac. Coal Co. (Wyo.) 107 Pac. 391; People v. Fornaro, 65 Misc. Rep. 457, 119 N. Y. Supp. 746; Stiers v. Mundy (Ind. App.) 89 N. E. 959; Board of Com'rs of City and County of Denver v. Lunney, 46 Colo. 403, 104 Pac. 945; Hicks v. Krigbaum (Ariz.) 108 Pac. 482; People ex rel. Scharff v. Frost, 198 N. Y. 110, 91 N. E. 376; State v. Myette, 30 R. I. 556, 76 Atl. 664. *See "Statutes," Dec. Dig. (Key No.) §§ 180–186; Cent. Dig. §§ 259–265.*

sorting to any extraneous considerations nor for supposing that the legislature may have intended something different from what it has thus expressed.[2]

"It is beyond question the duty of courts, in construing statutes, to give effect to the intent of the law-making power, and to seek for that intent in every legitimate way. But in the construction, both of statutes and contracts, the intent of the framers and parties is to be sought, first of all, in the words employed, and if the words are free from ambiguity and doubt, and express plainly, clearly, and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation, and, when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning. Statutes and contracts should be read and understood according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. Courts cannot correct supposed errors, omissions, or defects in legislation, or vary, by construction, the contracts of parties. The object of interpretation is to bring sense out of the

[2] Denn ex dem. Scott v. Reid, 10 Pet. 524, 9 L. Ed. 519; Rosenplaenter v. Roessle, 54 N. Y. 262; People v. Schoonmaker, 63 Barb. (N. Y.) 44; Rothschild v. New York Life Ins. Co., 97 Ill. App. 547; State v. Barco, 150 N. C. 792, 63 S. E. 673; State ex rel. Gray v. Wilder, 206 Mo. 541, 105 S. W. 272; Prindle v. United States, 41 Ct. Cl. 8; Ohio Nat. Bank v. Berlin, 26 App. D. C. 218; Commonwealth v. International Harvester Co., 131 Ky. 551, 115 S. W. 703, 133 Am. St. Rep. 256; Barstow v. Smith, Walk. Ch. (Mich.) 394; Ezekiel v. Dixon, 3 Ga. 146; Noble v. State, 1 G. Greene (Iowa) 325; Sherwood v. Atlantic & D. R. Co., 94 Va. 291, 26 S. E. 943; State v. Montello Salt Co., 34 Utah, 458, 98 Pac. 549; State ex rel. Town of Garland v. Maughan, 35 Utah, 426, 100 Pac. 934; St. Louis, I. M. & S. Ry. Co. v. Waldrop (Ark.) 123 S. W. 778; City of Birmingham v. Southern Express Co., 164 Ala. 529, 51 South. 159; United States v. Shing Shun & Co. (C. C.) 173 Fed. 844; Brown v. Wilmington & Brandywine Leather Co. (Del. Ch.) 74 Atl. 1105; Wabash R. Co. v. United States, 178 Fed. 5, 101 C. C. A. 133. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

words used, and not to bring a sense into them." [3] When an act is expressed in clear and concise terms, and the sense is manifest and leads to nothing absurd, there can be no reason not to adopt the sense which it naturally presents. To go elsewhere in search of conjectures, in order to find a different meaning, is not so much to interpret the statute as to elude it.[4] "When the words of an act are doubtful and uncertain, it was proper to inquire what was the intent of the legislature; but it is very dangerous for judges to launch out too far in searching into the intent of the legislature when they have expressed themselves in clear and plain words." [5] So, in Edrich's Case,[6] "the judges said that they ought not to make any construction against the express letter of the statute; for nothing can so express the meaning of the makers of the act as their own direct words, for 'index animi sermo.' And it would be dangerous to give scope to make a construction in any case against the express words, when the meaning of the makers doth not appear to the contrary, and when no inconvenience will thereupon follow; and therefore in such cases 'a verbis legis non est recedendum.'" "Although the spirit of an instrument, especially of the Constitution," says the Supreme Court of the United States, "is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to

[3] McCluskey v. Cromwell, 11 N. Y. 593, 601. *See "Statutes," Dec. Dig. (Key No.) §§ 174–203; Cent. Dig. §§ 254–281.*

[4] Vattel, Law of Nat., bk. 2, c. 17, § 263; Jackson ex dem. Boyd v. Lewis, 17 Johns. (N. Y.) 475; People v. New York Cent. R. Co., 13 N. Y. 78. See, also, Daily v. Robinson, 86 Ind. 382, where it is said that the object of the judicial interpretation of statutes is to ascertain the meaning which the citizen is authorized to consider as intended by the legislature. And see Shulthis v. MacDougal (C. C.) 162 Fed. 331, where the court remarked that it is generally safe to reject an interpretation which does not naturally suggest itself to the mind of a casual reader, but is rather the result of a laborious effort to extract from the statute a meaning which it does not at first seem to convey. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[5] Colehan v. Cooke, Willes, 393. *See "Statutes," Dec. Dig. (Key No.) §§ 180–203; Cent. Dig. §§ 259–281.*

[6] 5 Coke, 118a.

infer from extrinsic circumstances that a case for which the words of the instrument expressly provided shall be exempted from its operation. Where words conflict with each other, where the different clauses of the instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of the instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application." [7]

Literal Interpretation

Where the language of a statute is plain and unambiguous, and conveys a definite and sensible meaning, it is the duty of the court to enforce it according to the obvious meaning of the words employed, without attempting to change it by adopting a different construction, based upon some supposed policy of the legislature with reference to the subject-matter, or upon considerations of injustice or inconvenience resulting from the literal interpretation of the statute, or even to give the law that efficiency and due effect which it will lack when taken literally as it stands.[8]

[7] Sturges v. Crowinshield, 4 Wheat. 122, 202, 4 L. Ed. 529. *See "Statutes," Dec. Dig. (Key No.) §§ 180–203; Cent. Dig. §§ 259–281.*

[8] Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1, 15 Sup. Ct. 508, 39 L. Ed. 601; United States v. Fisher, 2 Cranch, 358, 2 L. Ed. 304; Doe ex dem. Poor v. Considine, 6 Wall. 458, 18 L. Ed. 869; United States v. Ninety-Nine Diamonds, 139 Fed. 961, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185; Swarts v. Siegel, 117 Fed. 13, 54 C. C. A. 399; Franklin Sugar Refining Co. v. United States (C. C.) 153 Fed. 653; United States v. Colorado & N. W. R. Co., 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (N. S.) 167; Union Cent. Life Ins. Co. v. Champlin, 116 Fed. 858, 54 C. C. A. 208; Rodgers v. United States, 36 Ct. Cl. 266; King v. Armstrong, 9 Cal. App. 368, 99 Pac. 527; Litch v. People ex rel. Town of Sterling, 19 Colo. App. 421, 75 Pac. 1079; Empire Copper Co. v. Henderson, 15 Idaho, 635, 99 Pac. 127; Eastman v. State, 109 Ind. 278, 10 N. E. 97, 58 Am. Rep. 400;

In the case supposed, where the language of the statute is free from ambiguity and conveys a definite and sensible meaning, the courts should not hesitate to give it a literal interpretation merely because they have doubts as to the wisdom or expediency of the enactment. In such a case, these are not pertinent inquiries for the judicial tribunals. If there be any unwisdom in the law, it is for the legislature to remedy it. For the courts the only rule is "ita lex scripta est." [9] Neither have the judges any authority, in

Ayers v. Trego County Com'rs, 37 Kan. 240, 15 Pac. 229; James v. United States Fidelity & Guarantee Co., 133 Ky. 299, 117 S. W. 406; Commonwealth v. Glover, 132 Ky. 588, 116 S. W. 769; State v. Scheffield, 123 La. 271, 48 South. 932; Walker v. Vicksburg, S. & P. Ry. Co., 110 La. 718, 34 South. 749; Davis v. Randall, 97 Me. 36, 53 Atl. 835; Cearfoss v. State, 42 Md. 403; Allen v. Mutual Fire Ins. Co., 2 Md. 111; Yerger v. State, 91 Miss. 802, 45 South. 849; Clark v. Kansas City, St. L. & C. R. Co., 219 Mo. 524, 118 S. W. 40; Ex parte Rickey, 31 Nev. 82, 100 Pac. 134, 135 Am. St. Rep. 651; State v. Woodruff, 68 N. J. Law, 89, 52 Atl. 294; Newell Universal Mill Co. v. Muxlow, 115 N. Y. 170, 21 N. E. 1048; People v. Long Island R. Co., 194 N. Y. 130, 87 N. E. 79; Slingluff v. Weaver, 66 Ohio St. 621, 64 N. E. 574; Woodbury v. Berry, 18 Ohio St. 456; Choctaw, O. & G. R. Co. v. Alexander, 7 Okl. 591, 54 Pac. 421; Dutro v. Ladd, 50 Or. 120, 91 Pac. 459; Bradbury v. Wagenhorst, 54 Pa. 180; Cowanshannock Poor Dist. v. Armstrong County, 31 Pa. Super. Ct. 386; Atlantic Coast Line R. Co. v. Richardson, 121 Tenn. 448, 117 S. W. 496; Fire Ass'n of Philadelphia v. Love, 101 Tex. 376, 108 S. W. 158; Bradshaw v. Lyles (Tex. Civ. App.) 119 S. W. 918; State v. Second Dist. Court (Utah) 104 Pac. 282; Miles v. Wells, 22 Utah, 55, 61 Pac. 534; State v. Franklin County Sav. Bank & Trust Co., 74 Vt. 246, 52 Atl. 1069; Johnson v. Mann, 77 Va. 265; Postal Tel. Cable Co. v. Norfolk & W. R. Co., 88 Va. 920, 14 S. E. 803; Burdick v. Kimball, 53 Wash. 198, 101 Pac. 845; Green Bay & M. Canal Co. v. Telulah Paper Co., 140 Wis. 417, 122 N. W. 1062; Green v. Wood, 7 Adol. & El. (N. S.) 178; Queen v. Armitage, 51 Law J. M. C. 15; Notley v. Buck, 8 Barn. & C. 160; Coe v. Lawrance, 1 El. & Bl. 516. In construing a statute, the court will not allow judicial interpretation to usurp the place of legislative enactment. State ex rel. Hughes v. Reusswig, 110 Minn. 473, 126 N. W. 279. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[9] State ex rel. McLean v. Liedtke, 9 Neb. 468, 4 N. W. 61; Horton v. Mobile School Com'rs, 43 Ala. 598. Compare Opinion of the Justices, 7 Mass. 523. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

such a case, to put upon the statute a construction different from its natural and obvious meaning in consideration of the consequences which may result from it. Any evil consequences to the public which may flow from the statute may be considered when its meaning is doubtful, in order to give it a more beneficial construction, but when the legislative intent is clearly expressed, such consequences cannot be at all considered.[10] And it has been said: "If the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense, even though it does lead to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure, but we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning." [11]

Even if the court is fully persuaded that the legislature really meant and intended something entirely different from what it actually enacted, and that the failure to convey the real meaning was due to inadvertence or mistake in the use of language, yet, if the words chosen by the legislature are not obscure or ambiguous, but convey a precise and sensible meaning (excluding the case of obvious clerical errors or elliptical forms of expression), then the court must take the law as it finds it, and give it its literal interpretation, without being influenced by the probable legislative meaning lying back of the words. In that event, the presumption that the legislature meant what it said, though it be contrary to the evident fact, is conclusive.[12]

[10] Hines v. Wilmington & W. R. Co., 95 N. C. 434, 59 Am. Rep. 250; Coffin v. Rich, 45 Me. 507, 71 Am. Dec. 559; Bosley v. Mattingly, 14 B. Mon. (Ky.) 89; Curry v. Lehman, 55 Fla. 847, 47 South. 18; Tierney v. Ledden, 143 Iowa, 286, 121 N. W. 1050. *See "Statutes," Dec. Dig. (Key No.) § 181; Cent. Dig. §§ 259, 263.*

[11] Abley v. Dale, 11 C. B. 378, 391. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[12] Smith v. State, 66 Md. 125, 7 Atl. 49; Maxwell v. State, 89 Ala. 150, 7 South. 824; St. Louis & I. M. R. Co. v. Clark, 53 Mo. 214; Maxwell v. State ex rel. Baldwin, 40 Md. 273. And see Diederich

A good illustration of this rule is found in the case of Woodbury v. Berry.[13] It appeared that a section of the code of Ohio provided that when a motion was made to amerce a sheriff or other officer for neglect of duty, he should have two days' written notice thereof. A subsequent section, which was copied from an earlier statute, provided that "in all cases of a motion to amerce a sheriff or other officer of any county from which the execution issued," he should have a much longer notice. The court said: "It certainly is difficult, if not impossible, to find any reason why an officer sought to be amerced by motion in the court of his own county should be thus favored in the matter of notice, while, on the other hand, the circumstances of the case to be provided for seem to require that the nonresident officer ought to be thus favored. These considerations, and a comparison of the provisions of these sections of the statute, as they stand, with those of the statute which was superseded and repealed by the Code of Civil Procedure, not only suggest the conjecture, but convince us of the fact, that the words 'other than the county,' or some equivalent phrase, must have been, by accident or oversight of the draftsman of the bill to establish a Code of Civil Procedure, or of the clerk who engrossed it, omitted before the words 'from which the execution issued' in section 455. But notwithstanding all this, ita lex scripta est. The language as it stands is clear, explicit, and unequivocal. It leaves no room for interpretation, for nothing in the language employed is doubtful. We are satisfied, by considerations outside the language, that the legislature intended to enact something very different from what it did enact. But it did not carry out its intention, and we cannot take the will for the deed. It is our legitimate function to interpret legislation, but not to supply its omissions."

v. Rose, 228 Ill. 610, 81 N. E. 1140. *See "Statutes," Dec. Dig. (Key No.) §§ 180–203; Cent. Dig. §§ 259–281.*

[13] 18 Ohio St. 456. *See "Statutes." Dec. Dig. (Key No.) §§ 189, 203; Cent. Dig. §§ 268, 281.*

On the same principle, the literal interpretation cannot be refused, where there is no ambiguity or want of sense, even though the result should be to defeat the very object and purpose of the enactment. Lord Tenterden once said: "Our decision may perhaps, in this particular case, operate to defeat the object of the statute; but it is better to abide by this consequence than to put upon it a construction not warranted by the words of the act, in order to give effect to what we may suppose to have been the intention of the legislature." [14] And though the literal interpretation should permit evasions of the statute, yet, if there is no ambiguity in the law, this consideration cannot be allowed to modify the construction to be put upon it. For example, in an English case,[15] it appeared that a bill of sale had been given by one Price to the plaintiff, but, instead of its being registered before the expiration of the twenty-one days allowed for that purpose by the statute of 17 & 18 Vict. c. 36, another bill of sale was given by Price to the plaintiff in exchange for the first. This was done many successive times, and ultimately the bill of sale last given was registered before the expiration of twenty-one days from the day on which that bill (the last) had been given. Defendant took Price's goods in execution, and plaintiff brought suit. In defense, it was charged that the transactions and course of dealing between Price and the plaintiff were fraudulent. This was unquestionably true. Yet the court was constrained to hold that the plain terms of the law had been literally complied with, and the bill of sale must be held valid. Although the spirit and purpose of the act had thus been successfully evaded, yet its language being free from ambiguity, it could not be construed to cover the case in hand.

Language of Statute Ambiguous

But if the statute is ambiguous, so as to be fairly susceptible of more than one interpretation, then the courts may

[14] King v. Inhabitants of Barham, 8 Barn. & C. 99. And see Frye v. Chicago, B. & Q. R. Co., 73 Ill. 399. *See "Statutes," Dec. Dig. (Key No.) §§ 180–203; Cent. Dig. §§ 259–281.*

[15] Smale v. Burr, L. R. 8 C. P. 64. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

rightfully exercise the power of controlling its language, so as to give effect to the intention of the legislature, as the same shall be ascertained and determined from pertinent and admissible considerations.[16] But it is necessary to remember that the intention of the law-making power is to be ascertained by a reasonable construction to be given to the provisions of the act, and not one founded on mere arbitrary conjecture.[17] And it is always the actual meaning of the legislature which must be sought out and followed, and not the judge's own ideas as to what the law should be. "It must be borne in mind that it is not competent to a judge to modify the language of an act of parliament in order to bring it into accordance with his own views as to what is right or reasonable."[18] Finally, although every law must be construed according to the intention of the makers, that intention is never resorted to for any other purpose than to ascertain what they in fact intended to do, and not for the purpose of ascertaining what they have done; that is, the object is to ascertain what the legislature intended to enact, but not to ascertain what is the legal consequence and effect of what they did enact.[19]

[16] Koch v. Bridges, 45 Miss. 247; Bidwell v. Whitaker, 1 Mich. 469; State ex rel. Missouri Mut. Life Ins. Co. v. King, 44 Mo. 283; George v. Board of Education, 33 Ga. 344; People v. Schoonmaker, 63 Barb. (N. Y.) 44; Noble v. State, 1 G. Greene (Iowa) 325; Ogden v. Strong, 2 Paine, 584, Fed. Cas. No. 10,460; Darlington Lumber Co. v. Missouri Pac. Ry. Co., 216 Mo. 658, 116 S. W. 530; State ex rel. Minneapolis, St. P. & S. S. M. R. Co. v. Railroad Commission, 137 Wis. 80, 117 N. W. 846. *See "Statutes," Dec. Dig. (Key No.) § 190; Cent. Dig. §§ 266, 269.*

[17] Cearfoss v. State, 42 Md. 403. *See "Statutes," Dec. Dig. (Key No.) § 190; Cent. Dig. §§ 266, 269.*

[18] Hardcastle, Stat. Law, 31.

[19] Leavitt v. Blatchford, 5 Barb. (N. Y.) 9. *See "Statutes," Dec. Dig. (Key No.) §§ 180–186; Cent. Dig. §§ 259–265.*

EQUITABLE CONSTRUCTION

28. Equitable construction was a principle by which the judges, disregarding the letter of a statute, extended its provisions to cases which, in their judgment, were within the same mischief which the law was designed to remedy, though they were not expressly provided for, or by which, on considerations of justice and right reason, they excepted from the operation of the statute cases which were covered by its terms, but which, in their opinion, were not fairly to be included in it. The power to make such constructions is now disavowed by the courts.

It must not be supposed that "equitable construction" was a method or principle applied by the court of chancery, as distinguished from the courts of law. On the contrary, the idea of it was familiar long before the rise of the extraordinary jurisdiction of the chancellor, and in later times it was in use in the law courts no less than in that of equity. It was based on the historical and fundamental conception of equity. According to this conception, there was a power, existing side by side with the law, yet not in derogation of it, based upon reason, and drawing its inspiration and its guidance from the principles of natural justice, the common sense of fairness, and the dictates of conscience, which power could be appealed to for relief, in particular and individual cases, when it was necessary, in accordance with those principles and precepts, to modify the rigor of the law to suit the case in hand, or to apply its rules to cases which it had not provided for, or to avert the hardship and injustice which the generality of its application would work in the specific instance. This power was called "equity" by the Roman lawyers, and both the name and the idea were adopted in the English jurisprudence. Hence the so-called equitable construction was nothing but

the principle of putting such a construction upon the written law as "equity," in this sense, would commend.[20]

Equitable construction was principally of two sorts, expansive and contractive. The former is thus described by Lord Coke: "Equity is a construction made by the judges that cases out of the letter of the statute, yet being within the same mischief, or cause of the making of the same, shall be within the same remedy that the statute provideth; and the reason thereof is, for that the lawmakers could not possibly set down all cases in express terms." [21] And conversely, in reference to cases which the judges thought should be excepted out of the statute, though covered by its express terms, because they were not within the mischief which it was intended to remedy, it was said that the law might be construed "contrary to the words," or "contrary to the text." The extent to which this equitable power of the courts was claimed to prevail over the words of the law is shown by the broad statement, made chiefly in reference to the construction of the more ancient statutes, which laid down general rules in the fewest words, that "judges have power over statute laws, to mould them to the truest and best use, according to reason and best convenience," which, of course, would be nothing less than a direct usurpation by the courts of the powers as well as the discretion of the legislature.[22] In the celebrated case of the Postnati of Scotland,[23] Lord Ellesmere

[20] See Hammond's note to Lieber, Hermeneutics, 283; 1 Bl. Comm. 61; Maine, Ancient Law, 27.

[21] 1 Co. Inst. 24b.

[22] Sheffield v. Ratcliffe, Hob. 346. "The idea that the judges, in administering the written law, can mould it and warp it according to their notions, not of what the legislator said, nor even of what he meant, but of what, in their judgment, he ought to have meant—in other words, according to their own ideas of policy, wisdom, or expediency—is so obviously untenable that it is quite apparent that it never could have taken rise except at a time when the division lines between the great powers of government were but feebly drawn, and their importance very imperfectly understood." Sedgwick, Stat. Constr. 265. *See "Statutes," Dec. Dig. (Key No.) § 182; Cent. Dig. § 260.*

[23] Calvin's Case, 2 How. St. Tr. 559, 675. *See "Statutes," Dec. Dig. (Key No.) § 182; Cent. Dig. § 260.*

laid down the following rule: "Words are to be taken and construed sometimes by extension; sometimes by restriction; sometimes by implication; sometimes a disjunctive for a copulative, or a copulative for a disjunctive; the present tense for the future, or the future for the present; sometimes, by equity, out of the reach of the words; sometimes words taken in a contrary sense; sometimes figuratively, and many other like constructions. And of all these examples be indefinite, as well in the civil as common law." Upon this it has been remarked: "Any one that reads this will easily judge what the scope and consequences of the chancellor's rule may be. And he may as easily discern how far it is capable of being improved, to baffle and elude any law whatsoever, and wrest it from its genuine and native sense to what you please." [24]

The origin and reasons of this extraordinary claim of power have been variously explained. "Equitable construction was said to have been given to ancient statutes in consequence of the conciseness with which they were drawn, though the specific expressions used can hardly be considered more concise than the more abstract terms for which they were, possibly, substituted. It has been explained, also, on the ground that language was used with no great precision in early times, and that acts were framed in harmony with the lax method of interpretation contemporaneously prevalent. It has also been accounted for by the fact that in those times the dividing line between the legislative and judicial functions was feebly drawn, and the importance of the separation imperfectly understood. The ancient practice of having the statutes drawn by the judges from the petitions of the commons and the answers of the king may also contribute to account for the wide latitude of their interpretation. The judges would naturally be disposed to construe the language in which they framed them as their own, and therefore with freedom and indulgence." [25]

[24] Potter's Dwarris on Stat. 237.
[25] Maxwell, Interp. (2d Ed.) 310.

The difference between the two kinds of equitable construction, as well as the application of them to specific cases, are learnedly explained by Plowden, in a note to Eyston v. Studd, 2 Plowd. 465. This ancient writer observes: "From this judgment and the cause of it the reader may observe that it is not the words of the law, but the internal sense of it, that makes the law, and our law, like all others, consists of two parts, viz., of body and soul; the letter of the law is the body of the law, and the sense and reason of the law are the soul of the law. * * * And it often happens that when you know the letter you know not the sense; for sometimes the sense is more confined and contracted than the letter, and sometimes it is more large and extensive. And equity enlarges or diminishes the letter according to its discretion, which equity is in two ways. The one Aristotle defines thus: 'Equity is the correction of the law in those particulars wherein, by reason of its generality, it is deficient.' * * * And this correction of the general words is much used in the law of England. As when an act of Parliament ordains that whosoever does such an act shall be a felon and shall suffer death, yet if a man of unsound mind, or an infant of tender age who has no discretion, does the act, they shall not be felons, nor shall they be put to death. And if a statute be made that all persons who shall receive or give meat or drink or other aid to him that shall do such an act (knowing the same to be done) shall be accessaries to the offense and shall be put to death, yet, if a man commits the act, and comes to his own wife, who, knowing the same, receives him and gives him meat and drink, she shall not be accessary to his offense, nor a felon. For one that is of unsound mind, an infant, or a wife, were not intended to be included in the general words of the law. So that, in those cases, the general words of the law are corrected and abridged by equity. * * * The other kind of equity differs much from the former, and is in a manner of quite a contrary effect, and may well be thus defined: Equity is giving a more efficacious direction to the words of the law; as if one thing is specifically provided for by the words of the law, then every other thing belonging to the same category

is to be taken as provided for by the same words. So that when the words of a statute enact one thing, they enact all other things which are in the like degree. As, the statute which ordains that in an action of debt against executors, he who comes first by distress shall answer, is extended by equity to administrators, and such of them as come first by distress shall answer by the equity of the said statute. * * * And so there are an infinite number of cases in our law which are in equal degree with others provided for by statutes, and are taken by equity within the meaning of those statutes. And from hence it appears that there is a great diversity between these two equities, for the one abridges the letter, the other enlarges it; the one diminishes it, the other amplifies it; the one takes from the letter, the other adds to it. So that a man ought not to rest upon the letter only, for 'qui hæret in litera hæret in cortice;' but he ought to rely upon the sense, which is tempered and guided by equity."

The contractive species of equitable construction has been sufficiently explained in the extract given above, but as to the other variety it is proper to add a few words. It was a maxim laid down by Lord Coke that "statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis." [26] And "it is not unusual in acts of Parliament, especially in the more ancient ones, to comprehend by construction a generality where express mention is made only of a particular; the particular instances being taken only as examples of all that want redress in the kind whereof the mention is made." [27] In such cases, that which lies outside the letter of the law is said to be within the "equity of the statute." This phrase denotes the construction which admits within the operation of the statute a class of cases which are neither expressly named nor excluded, but which, from their analogy to the cases which are named, are clearly and justly within the spirit and general meaning of the law. For example, the

[26] 10 Coke, 101b.

[27] Platt's Case, Plowd. 36. *See "Statutes," Dec. Dig. (Key No.) § 182; Cent. Dig. § 260.*

statute, or writ, called "Circumspecte Agatis," in the 13th year of Edward I, was designed to regulate the boundaries between the ecclesiastical and the temporal jurisdiction. It directed the judges not to interfere with the Bishop of Norwich or his clergy in suits in the spiritual courts; but it was so construed as to protect all other prelates in the exercise of their proper jurisdiction, for it was held that the Bishop of Norwich was merely put for an example. So again, uses were not strictly within the statute "De Donis," but they were "taken within the equity," and in Chudleigh's Case,[28] Coke furnishes numerous instances of acts made "against the fraud of uses" having been construed liberally and by equity beyond the letter. And so, in an American case, where a statute gave to a judgment creditor, who had taken his debtor on a ca. sa., and then released him, the right to proceed against him "by a new execution or such other process as the nature of the case may require," it was held that, "within the equity of the statute," he might pursue him into another state, to which he had departed, and there maintain an action of debt on the judgment.[29] There were, however, always limitations upon this principle. Thus, "if the words of a statute do not reach to an inconvenience rarely happening, they shall not be extended to it by an equitable construction; for the objects of statutes are mischiefs 'quæ frequentius accidunt.' It is good reason in such case, and therefore sound construction, not to strain the words further than they reach, but the case is to be considered as a casus omissus." [30]

The right to apply an equitable construction to the written laws was often adverted to as one to be exercised with caution, on account of the danger of turning the courts into legislatures, and in modern times it has been disavowed by them, and its principle distinctly repudiated.[31] It is

[28] 1 Coke, 131.

[29] Simonton v. Barrell, 21 Wend. (N. Y.) 362. *See "Statutes," Dec. Dig. (Key No.) § 182; Cent. Dig. § 260.*

[30] Potter's Dwarris on Stat. 240.

[31] In Brandling v. Barrington, 6 Barn. & C. 467, 475, Lord Tenterden observed: "I think there is always danger in giving effect to what is called the equity of a statute, and that it is much better

said that the rules for the interpretation of statutes are now the same in courts of equity as in courts of law,[32] and that the dangerous and misleading ancient rule has given way to the more conservative maxim that equity follows the law. And in point of fact, so far as the principle of equitable construction involved the claim of an authority to correct the enacted law, or to mould it to the judge's notions of justice and propriety, or to disregard its positive mandates on any considerations of hardship or inconvenience, it was originally an usurpation and finds no place in modern law. In one of the American cases we find it very clearly stated that the view that the courts may, against the plain language of a statute and in opposition to the intent clearly expressed by the words, mitigate the "violence of the letter" by introducing exceptions where the statute itself makes none, so as to relieve in cases of hardship or particular inconvenience, is not now of force.[33] And in

to rely on and abide by the plain words, although the legislature might possibly have provided for other cases had their attention been directed to them." And in Guthrie v. Fisk, 3 Barn. & C. 178, 183, it was said: "It is a dangerous rule of construction to introduce words not expressed because they may be supposed to be within the mischief contemplated." So, in Inhabitants of Monson v. Inhabitants of Chester, 22 Pick. (Mass.) 385: "Equitable constructions, though they may be tolerated in remedial and perhaps some other statutes, should always be resorted to with great caution, and never extended to penal statutes or mere arbitrary regulations of matters of public policy. The power of extending the meaning of a statute beyond its words, and deciding by the equity and not the language, approaches so near the power of legislation that a wise judiciary will exercise it with reluctance and only in extraordinary cases." And see Melody v. Reab, 4 Mass. 471; State v. Woodside, 112 Mo. App. 451, 87 S. W. 8. *See "Statutes," Dec. Dig. (Key No.) § 182; Cent. Dig. § 260.*

[32] Talbot's Lessee v. Simpson, Pet. C. C. 188, Fed. Cas. No. 13,730; Ex parte Walton, L. R. 17 Ch. Div. 746. *See "Statutes," Dec. Dig. (Key No.) § 182; Cent. Dig. § 260.*

[33] Encking v. Simmons, 28 Wis. 272. In this case it was said: "When, therefore, the statute says that every mortgage containing a power of sale may be foreclosed by advertisement, and makes no exception of a mortgage upon lands belonging to an insane person, such mortgage cannot be excluded from the operation of the statute, because that would be repugnant to the intent as clearly expressed by the words. The words cannot be taken to a repugnant

another case, it is declared that a court has no authority to extend a law beyond the fair and reasonable meaning of its terms because of some supposed policy of the law, or because the legislature did not use proper words to ex-

intent. In such case, the language of the statute being general, and the particular mortgage not being excepted, the established rule of interpretation is that general words must receive a general construction." In Riggs v. Palmer, 115 N. Y. 506, 22 N. E. 188, 5 L. R. A. 340, 12 Am. St. Rep. 819, the doctrine of "rational interpretation" was applied, on an extraordinary state of facts, to the statutes relating to devolution of property by will. The residuary devisee named in a will having murdered the testator, who was his grandfather, to prevent revocation of the will and to obtain immediate enjoyment of the property, the provisions of the will were declared ineffective to pass title to the murderer, although the statutes, literally construed, would have given him the property. In the opinion of the majority of the court (two justices dissenting), it was said: "It was the intention of the law-makers that the donees in a will should have the property given to them. But it never could have been their intention that a donee who murdered the testator to make the will operative should have any benefit under it. If such a case had been present to their minds, and it had been supposed necessary to make some provision of law to meet it, it cannot be doubted that they would have provided for it. It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. The writers of laws do not always express their intention perfectly, but either exceed it or fall short of it, so that judges are to collect it from probable or rational conjectures only, and this is called 'rational interpretation.'" So, in Shellenberger v. Ransom, 31 Neb. 61, 47 N. W. 700, 10 L. R. A. 810, 28 Am. St. Rep. 500; Id., 41 Neb. 631, 59 N. W. 935, 25 L. R. A. 564, a similar question was presented as to the operation of the statutes of descent on the estate of an infant daughter, dying intestate and without issue, who had been murdered by her father that he might obtain the title to and possession of her property. The court, on the first hearing, quoting and following the opinion in Riggs v. Palmer, held that the father took no estate from the daughter; but, on a rehearing, decided that the murder was not ground for an exception to the statutory rules of inheritance. In the latter opinion, it was said: "In our statute of descent there is neither ambiguity nor room for construction. The intention of the Legislature is free from doubt. The question is not what the framers of our statute of descent would have done, had it been in their minds that a case

press its meaning.[34] But nevertheless, many of the cases which were decided on what was called the "equity of the statute" would now be decided in precisely the same way, though not avowedly on that principle.[35] This is because there was a just and reasonable idea at the base of the principle in question, and this, so far as it is applicable to modern conditions, has survived. This idea was that a given case should not be taken to be within a statute, though apparently covered by its comprehensive terms, unless it is within the spirit and reason of the law. In the next section we shall show the application of this rule in modern practice. Moreover, the courts now claim (and the claim is well recognized) that it is their duty to construe a statute "strictly" when it imposes a burden or penalty or derogates from common right, and "liberally" when it grants a

like this would arise, but what in fact they did, without perhaps anticipating the possibility of its existence. This is determined, not by hypothetical resort to conjecture as to their meaning, but by a construction of the language used. The majority opinion in Riggs v. Palmer, as well as the opinion already filed in this case, seems to have been prompted largely by the horror and repulsion with which it may justly be supposed the framers of our statute would have viewed the crime and its consequences. This is no justification to this court for assuming to supply legislation, the necessity for which has been suggested by subsequent events, but which did not occur to the minds of those legislators by whom our statute of descent was framed." *See "Statutes," Dec. Dig. (Key No.) §§ 180–203; Cent. Dig. §§ 259–281.*

[34] Tompkins v. First Nat. Bank of Penn Yan (Sup.) 18 N. Y. Supp. 234. *See "Statutes," Dec. Dig. (Key No.) § 182; Cent. Dig. § 260.*

[35] See Perry v. Strawbridge, 209 Mo. 621, 108 S. W. 641, 46 L. R. A. (N. S.) 244, 123 Am. St. Rep. 510; State v. Baltimore & O. R. Co., 61 W. Va. 367, 56 S. E. 518. In Smiley v. Sampson, 1 Neb. 56, 91, it was observed that "a true equitable construction consists in showing, by principles of natural good sense, that a particular case is not comprehended in the meaning of a law because, if it were so comprehended, some absurdity would naturally follow." And see State v. Comptoir National D'Escompte de Paris, 51 La. Ann. 1272, 26 South. 91, where we read that the construction which equity would favor may be adopted by a court of law in construing a statute, if two constructions are fairly possible. *See "Statutes," Dec. Dig. (Key No.) § 182; Cent. Dig. § 260.*

remedy or confers an advantage. This will appear more fully in a later chapter.

SPIRIT AND REASON OF THE LAW

29. When the interpretation of a statute according to the exact and literal import of its words would lead to absurd or mischievous consequences, or would thwart or contravene the manifest purpose of the legislature in its enactment, it should be construed according to its spirit and reason, disregarding or modifying, so far as may be necessary, the strict letter of the law.[36]

30. In accordance with this principle, the courts have power to declare that a case which falls within the letter of a statute is not governed by the statute, because it is not within the spirit and reason of the law and the plain intention of the legislature.

[36] United States v. Hogg, 112 Fed. 909, 50 C. C. A. 608; In re Matthews (D. C.) 109 Fed. 603; Clare v. State, 68 Ind. 17; Ross v. State, 9 Ind. App. 35, 36 N. E. 167; Sexton v. Sexton, 129 Iowa, 487, 105 N. W. 314, 2 L. R. A. (N. S.) 708; Old Dominion Building & Loan Ass'n v. Sohn, 54 W. Va. 101, 46 S. E. 222; State v. Chicago & N. W. R. Co., 128 Wis. 449, 108 N. W. 594; Gilbert v. Morgan, 98 Ill. App. 281; Commonwealth v. Reynolds, 89 Ky. 147, 12 S. W. 132; Carrigan v. Stillwell, 99 Me. 434, 59 Atl. 683, 68 L. R. A. 386; Winters v. City of Duluth, 82 Minn. 127, 84 N. W. 788; State ex inf. Folk v. Talty, 166 Mo. 529, 66 S. W. 361; Parker v. Nothomb, 65 Neb. 308, 93 N. W. 851, 60 L. R. A. 699; State ex rel. Douglas County v. Drexel, 75 Neb. 614, 106 N. W. 791; Edwards v. Morton, 92 Tex. 152, 46 S. W. 792; Chalmers v. Funk, 76 Va. 717; Orange & A. R. Co. v. City Council of Alexandria, 17 Grat. (Va.) 176; Wisconsin Industrial School for Girls v. Clark County, 103 Wis. 651, 79 N. W. 422; Brookings County v. Murphy, 23 S. D. 311, 121 N. W. 793; State v. People's Nat. Bank, 75 N. H. 27, 70 Atl. 542; Davis & Co. v. Thomas, 154 Ala. 279, 45 South. 897; Curry v. Lehman, 55 Fla. 847, 47 South. 18; Roberts v. State, 4 Ga. App. 207, 60 S. E. 1082; Stambaugh Tp. v. Treasurer of Iron County, 153 Mich. 104, 116 N. W. 569; Postal Telegraph Cable Co. v. Norfolk & W. R. Co., 88 Va. 920, 14 S. E. 803. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

31. Conversely, statutes may be extended to cases not within the literal import of their terms, if plainly meant to be included; for that which is within the intention of the legislature, in the framing of a statute, is as much within the statute as if it were within its letter.[37]

32. But where the statute is free from ambiguity and plainly shows what the legislature meant, the letter of it is not to be disregarded under the pretext of pursuing its spirit, and exceptions not made by the legislature cannat be read into it.[38]

These rules affirm and apply the principle that the intention of the legislature in enacting a law is the law itself, and that the intention, when plainly manifest on the face of the statute, or when clearly ascertained, must be enforced, although it may not be consistent with the exact and literal import of the language employed. For the letter of a statute should not be slavishly followed when it leads away from the true intention and purpose of the legislature or leads to conclusions inconsistent with the general purpose of the act or to consequences irreconcilable with its spirit and reason.[39]

These principles were very clearly and positively laid down by the Supreme Court of the United States in an important case which involved a construction of the so-called

[37] Plaster v. Rigney, 97 Fed. 12, 38 C. C. A. 25; In re Board of Rapid Transit R. Com'rs, 128 App. Div. 103, 112 N. Y. Supp. 619; State ex rel. Hammer v. Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005; Brown v. Gates, 15 W. Va. 131; Riddick v. Walsh, 15 Mo. 519; Brown v. Pendergast, 7 Allen (Mass.) 427; Whitney v. Whitney, 14 Mass. 88; Kirk v. Morley Bros. (Tex. Civ. App.) 127 S. W. 1109; Cummins v. Pence (Ind.) 91 N. E. 529; Hasson v. City of Chester (W. Va.) 67 S. E. 731. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[38] Gooden v. Police Jury of Lincoln Parish, 122 La. 755, 48 South. 196; Siren v. State, 78 Neb. 778, 111 N. W. 798. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[39] In re Cahn, 27 App. D. C. 173; Mendles v. Danish, 74 N. J. Law, 333, 65 Atl. 888; Clare v. State, 68 Ind. 17. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

"Alien Contract Labor Law." This act of Congress prohibits the importation into this country of "any" foreigners under contract to perform "labor or service of any kind." The question arose as to its applicability to a clergyman who came to this country under contract to enter the service of a church as its rector. The court conceded that the case came within the letter of the law, but because it was not within the spirit and intent of the law, it was held that the act had no application to the case at bar. "It is a familiar rule," said the court, "that a thing may be within the letter of the statute, and yet not within the statute, because not within its spirit nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator; for frequently words of general meaning are used in a statute, words broad enough to include the act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act." And speaking to the case at bar: "The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil; and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute." [40]

[40] Rector, etc., of Holy Trinity Church v. United States, 143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226. And see, further, Ex parte Walton, L. R. 17 Ch. Div. 746; United States v. Freeman, 3 How. 556, 11 L. Ed. 724; Associates of Jersey Co. v. Davison, 29 N. J. Law, 415; Chase v. Dwinal, 7 Me. 134, 20 Am. Dec. 352;

It would be easy to multiply examples of the application of this rule, both from ancient and modern times. Puffendorf, for example, mentions a law of Bologna which enacted that "whoever drew blood in the streets should be punished with the utmost severity." After long debate this was held not to extend to the case of a surgeon who opened the veins of a person who fell down in the street in a fit.[41] So Blackstone says: "The most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislator to enact it. An instance of this is given in a case put by Cicero. There was a law that those who, in a storm, forsook the ship, should forfeit all property therein, and that the ship and lading should belong entirely to those who staid in it. In a dangerous tempest, all the mariners forsook the ship, except only one sick passenger, who, by reason of his disease, was unable to get out and escape. By chance the ship came safe to port. The sick man kept possession, and claimed the benefit of the law. Now here all the learned agree that the sick man is not within the reason of the law; for the reason of making it was to give encouragement to such as should venture their lives to save the vessel; but this is a merit which he could never pretend to who neither staid in the ship upon that account nor contributed anything to its preservation." [42] So, in the case of United States v. Kirby,[43] the defendants were indicted for the violation of an act of Congress providing that

People v. Rector, etc., of Church of Atonement, 48 Barb. (N. Y.) 603; Allen v. Mayor, etc., of City of Savannah, 9 Ga. 286; Castner v. Walrod, 83 Ill. 171, 25 Am. Rep. 369; Kennedy's Heirs v. Kennedy's Heirs, 2 Ala. 571; Moss v. United States, 29 App. D. C. 188; People ex rel. Hunt v. Lane, 132 App. Div. 406, 116 N. Y. Supp. 990; Kelley v. Killourey, 81 Conn. 320, 70 Atl. 1031, 129 Am. St. Rep. 220. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[41] Puffendorf, De Jure Nat., l. 5, c. 12, § 8. It was a maxim of the Roman law that "benignius leges interpretandæ sunt, quo voluntas earum conservetur." Dig. 1, 3, 18.

[42] 1 Bl. Comm. 61.

[43] 7 Wall. 482, 19 L. Ed. 278.

"if any person shall knowingly and willfully obstruct or retard the passage of the mail, or of any driver or carrier, or of any horse or carriage carrying the same," he shall suffer a penalty. The charge was that the defendants retarded the passage of one Farris, a carrier of the mail, while he was engaged in the performance of his duty, and also in like manner retarded the steamboat Buell, at that time engaged in carrying the mail. They pleaded that Farris had been indicted for murder by a court of competent jurisdiction, that a bench warrant had been issued and placed in the hands of the defendant Kirby, the sheriff of the county, commanding him to arrest Farris, and that, in obedience to this warrant, he and the other defendants, as his posse, entered upon the steamboat and arrested Farris, and used only such force as was necessary to accomplish the arrest. It was held by the Supreme Court that the seizure of Farris was not an obstruction of the mail, or a retarding of the passage of a carrier of the mail, within the meaning of the act. Again, a statute of New York prohibited any sheriff or deputy sheriff, or any one for them, from purchasing any property at any execution sale, and declared void all purchases so made. In an action of ejectment, it appeared that certain premises had been sold by one deputy sheriff, on an execution issued under a judgment owned by another deputy of the same sheriff, and were bid off by the deputy who owned the judgment. It was contended that, under the statute, the sale was void. Plainly the case came within the letter of the law. But it was held that the statute should not apply, because the manifest object of the law was to prevent abuse, and to prohibit sheriffs and their deputies in their official capacity from being purchasers at their own sales, and thus being induced to act corruptly in relation to them, but it could never have been intended to place those persons in a worse situation than others as to the collection of their own demands.[44] Again, it is ruled that the statute of frauds, which requires certain contracts to be in writing, and the consideration expressed therein, applies to

[44] Jackson ex dem. Scofield v. Collins, 3 Cow. (N. Y.) 89. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

executory contracts only, and not to instruments which of themselves pass the estate by words of grant, assignment, surrender, or declaration of trust.[45] And the words "beyond seas," in a state statute of limitations, copied from an English act without due attention to the consequences of incorporating these terms without qualification, have been construed to mean "out of the state." [46] So although a law exempts from execution only such tools of a mechanic as are "necessary to his use and used by him in his trade," a temporary stoppage of his work will not forfeit the exemption; for the object of the law is to prevent those who have become unfortunate from being deprived of the means of making a living, and it must be presumed to contemplate that the loss of all that is not exempt may cause at least a temporary suspension of business.[47] So again, where a statute authorized the conveyance, by a certain county to the state, of certain lands in such distinct lots or parcels "as the said county shall now hold by virtue of tax deeds issued upon sales for delinquent taxes heretofore made," it was held that the act should be construed not to apply to lands of which the tax deeds held by the county were void on their face, although there were in fact no lands to which the act, thus construed, could apply.[48]

In pursuance of the principle of construing a statute according to its spirit (and also with the help of the presump-

[45] Cruger v. Cruger, 5 Barb. (N. Y.) 225. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[46] Murray v. Baker, 3 Wheat. 541, 4 L. Ed. 454; Davie v. Briggs, 97 U. S. 628, 24 L. Ed. 1086; Mason v. Johnson, 24 Ill. 159, 76 Am. Dec. 740; Earle v. Dickson, 12 N. C. 16; Smith v. Bartram, 11 Ohio St. 690; Galusha v. Cobleigh, 13 N. H. 79; Hulburt v. Merriam, 3 Mich. 144; Shreve v. Whittlesey, 7 Mo. 473; Mason v. Union Mills Paper Mfg. Co., 81 Md. 446, 32 Atl. 311, 29 L. R. A. 273, 48 Am. St. Rep. 524; Forbes' Adm'r v. Foot's Adm'r, 2 McCord (S. C.) 331, 13 Am. Dec. 732; Wakefield v. Smart, 8 Ark. 488; Bedford v. Bradford, 8 Mo. 233; Bank of Alexandria v. Dyer, 14 Pet. 141. 10 L. Ed. 391. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[47] Harris v. Haynes, 30 Mich. 140. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[48] Haseltine v. Hewitt, 61 Wis. 121, 20 N. W. 676. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

tion that the legislature never intends to make an unnecessary change in the law), it is held that a penal or criminal statute will not be extended to cases not plainly within its intention. If the law declares in general and unqualified terms that the doing of a given act shall be a felony or misdemeanor, or shall be attended with other penal consequences, still it will not be understood as applying to a case where the act was justifiable or excusable on grounds generally recognized by law. This is illustrated by the case supposed by some of the older writers, where a statute should make it a felony to "break from prison." Yet if the prison should be on fire, and a prisoner should break out, not to regain his liberty, but to save his life, he would not be guilty under the statute. As they put it, "he shall not be hanged because he would not stay to be burned." An important branch of this rule, or corollary from it, may be stated as follows: As the criminal law generally requires an evil intent, or guilty mind, to make any act a criminal offense, and as it is not to be supposed that the legislature intended to abrogate this rule unless by the most explicit language, if an act provides, generally, that the commission of a given act shall be a crime, or that "any person" who does the act shall be guilty of a crime, still the courts will understand that it could not have been intended to apply to the case of a person incapable of a criminal intention, such as a young child, a madman, or an idiot, and therefore, although such persons may be within the letter of the statute, an exception will be made in their favor, in accordance with the reason of the case and the spirit of the law.[49] So, without reference to the capacity of the person, it may be suffi-

[49] 1 Hale, P. C. 706; Regina v. Moore, 3 Car. & K. 319; Regina v. Tolson, L. R. 23 Q. B. Div. 168. It should be observed that modern statutes generally provide against the possibility of this question arising in specific cases, by declaring that the act denounced shall be a crime when done "willfully," "maliciously," or "knowingly." But it should also be noticed that the words of the act may be so clear and specific as to negative the idea that any exception whatever was intended. And in such cases, the courts have no discretion. They must enforce the law as they find it. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

cient to take a case out of the statute that the element of willfulness or malice was wanting. Thus, in Connecticut, where a statute provided that if "the owner of any ram shall suffer him to go at large," he should be subject to a penalty, it was said that to "suffer" a ram to go at large, or out of the owner's enclosure, implied consent or willingness of the mind, and that although the statute intended to enforce strict care on the part of the owner in restraining his ram, it did not require such a degree of care as would amount to an obligation on him to restrain the animal, at all events, unless prevented by some uncontrollable cause, nor any greater care than is usually taken by careful and prudent farmers in like cases.[50]

On a similar principle, it is held that where a statute gives punitive damages, or double or treble damages, against one who cuts timber growing on the land of another, without the latter's consent, and converts it to his own use, the law should be confined to cases where some element of willfulness, wantonness, carelessness, or evil design enters into the act. And therefore it does not include the case of a corporation which enters upon the lands of another and cuts trees, under a claim of the right of eminent domain, although, in consequence of the failure of the corporation to give bond or make compensation, as required by law, the taking of the land was a trespass.[51] And where a statute imposes liability without qualification (as, where it requires railroad companies to fence their tracks, and makes them liable for injuries caused by the want of a fence or its defective condition), it may be construed as intended to im-

[50] Selleck v. Selleck, 19 Conn. 501. Compare Hall v. Adams, 1 Aik. (Vt.) 166. "No man," says the court in Maryland, "incurs a penalty unless the act which subjects him to it is clearly both within the spirit and letter of the statute. Things which do not come within the words are not to be brought within them by construction; the law does not allow of constructive offenses or of arbitrary punishment." Cearfoss v. State, 42 Md. 403. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[51] Endlich, Interp. § 129; Gohn v. Neeves, 40 Wis. 393; Kramer v. Goodlander, 98 Pa. 353; Bethlehem South Gas & Water Co. v. Yoder, 112 Pa. 136, 4 Atl. 42. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

pose liability in case of negligence only.[52] As another deduction from the same principle, it is said that an act done in the honest assertion of a right, which would be good in law if well founded in fact, but which proves unfounded in fact, would not fall within a statute which prohibited it under a penalty, unless, indeed, the penalty was in the nature simply of compensation for a civil injury. So, if a man cut down a tree or demolished a house standing on land of which he was in undisturbed possession and believed himself to be the owner, he would not be punishable under statutes which prohibited such acts in general terms, although it turned out that his title was bad and the property was not his.[53]

There may also be cases in which ignorance or a mistaken belief in regard to a matter of fact will so far negative the existence of a guilty intent as to take the case out of the comprehensive terms of the statute. In a certain English case, it appeared that a statute "for the better prevention of accidents or injury on railways from the unsafe and improper carriage of certain goods," enacted that every person who should send gunpowder or similarly dangerous articles by the railway should mark or declare their nature, under a penalty. It was held that a guilty knowledge was essential to constitute the crime. And accordingly, an agent, who had sent some cases of dangerous goods by a railway, without mark or declaration, not only in ignorance of their nature, but being misinformed of it by his principal in answer to his inquiries, was not liable to the penalty, on the ground that his ignorance, under such circumstances, proved the absence of a guilty intention. And yet he was under no legal duty to send the goods, and he might have refused to do so without satisfying himself by inspection as to their nature.[54] But it should be carefully remarked

[52] Murray v. New York Cent. R. Co., 3 Abb. Dec. (N. Y.) 339. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[53] Maxwell, Interp. (2d Ed.) 116; Regina v. Burnaby, 2 Ld. Raym. 900. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[54] Hearne v. Garton, 2 El. & El. 66. See Gordon v. Farquhar, Peck (Tenn.) 155. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

that there is a considerable class of statutory crimes in regard to which ignorance of fact, or a mistaken belief as to a fact, is no excuse whatever. This is the case where the criminality of the given act depends upon the existence of some particular independent fact, and it is plainly the intention of the legislature that all persons shall be at their own peril, as to the existence of that fact, if they do the prohibited act. For example, it is generally held (though the authorities are not fully agreed on these points) that if a statute makes it a criminal offense to sell intoxicating liquor to a minor, any person who makes such a sale will be liable, notwithstanding that he was mistaken as to the buyer's age and honestly believed him to be of full age;[55] that if the law prohibits the sale of adulterated articles of food or drink, it is no defense to a prosecution under it that the seller was ignorant of the fact of adulteration;[56] and that a married person who contracts a second marriage is guilty of bigamy, if the first spouse be still living and undivorced, though the defendant was ignorant of that fact.[57]

The principle of construing a statute according to its spirit and reason has very little connection, if any, with the maxim "cessante ratione legis cessat et ipsa lex." It might be thought that, by virtue of the principle in question, in the case of an obsolete or obsolescent statute, the courts might nullify it by construction. But while the practical desuetude of a law may justify the judicial tribunals in applying to it a greater latitude of construction than would otherwise be permissible, yet the prevailing opinion

[55] People v. Roby, 52 Mich. 577, 18 N. W. 365, 50 Am. Rep. 270; McCutcheon v. People, 69 Ill. 601; State v. Kinkead, 57 Conn. 173, 17 Atl. 855; State v. Hartfiel, 24 Wis. 61. Compare Mulreed v. State, 107 Ind. 62, 7 N. E. 884; Faulks v. People, 39 Mich. 200, 33 Am. Rep. 374; Aultfather v. State, 4 Ohio St. 467; Reich v. State, 63 Ga. 616. See Black, Intox. Liq. §§ 417, 418. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[56] Commonwealth v. Boynton, 2 Allen (Mass.) 160; People v. Kibler, 106 N. Y. 321, 12 N. E. 795. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[57] Regina v. Gibbons, 12 Cox, C. C. 237. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

is that no statute becomes inoperative by mere nonuser. It may become obsolete when the object to which it was intended to apply no longer exists; and in that event the maxim quoted has its proper application. But the sole fact that the protection or penalty of the act has not been invoked for a long period of time will not warrant the courts in refusing to enforce it if a state of facts fairly within its purview shall again come before them.[58]

SCOPE AND PURPOSE OF THE ACT

33. Every statute is to be construed with reference to its intended scope and the purpose of the legislature in enacting it; and where the language used is ambiguous, or admits of more than one meaning, it is to be taken in such a sense as will conform to the scope of the act and carry out the purpose of the statute.

When the language of a statute is obscure and its meaning doubtful, or when there is substantial ground to doubt whether it was meant to apply to the particular state of facts before the court, the intention of the legislature in enacting it may generally be determined from a consideration of the purpose with which the law was made. To ascertain the purpose, it is permissible to take into consideration the surrounding circumstances and the history of the times, the law as it stood before the enactment, the occasion and necessity for the new statute, the mischief or evil intended to be cured, and the remedy intended to be applied, as also the consequences of adjudging the statute to be applicable or not applicable to the case at bar.[59] That construction of the

[58] See Commonwealth v. Hoover, 1 Browne (Pa.) Appendix, xxv; Austin, Jurisprudence, § 914; Bishop, Written Laws, § 149. *See "Statutes," Dec. Dig. (Key No.) § 183; Cent. Dig. § 261.*

[59] United States v. Ninety-Nine Diamonds, 139 Fed. 961, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185; Massachusetts Loan & Trust Co. v. Hamilton, 88 Fed. 588, 32 C. C. A. 46; Pembroke v. Huston, 180 Mo. 627, 79 S. W. 470; Pugh v. Kansas City, St. J. & C. B. R. Co.,

statute should then be adopted which promotes and carries out to the fullest possible extent the legislative purpose, but which also goes no step beyond it.[60] On the one hand, it would be wrong to defeat or to curtail the apparent purpose of the legislature by a narrow construction, adhering too closely to the letter of the law, and, on the other hand, it would be equally unpermissible to give such a loose or

118 Mo. 506, 24 S. W. 440; Ross v. Kansas City, St. J. & C. B. R. Co., 111 Mo. 18, 19 S. W. 541; Marquette Third Vein Coal Co. v. Allison, 132 Ill. App. 221; State v. Barrett, 27 Kan. 213; Commonwealth v. Trent, 117 Ky. 34, 77 S. W. 390; Richard v. Lazard, 108 La. 540, 32 South. 559; State v. Peet, 80 Vt. 449, 68 Atl. 661, 14 L. R. A. (N. S.) 677, 130 Am. St. Rep. 998; Kaufman v. Carter, 67 S. C. 312, 45 S. E. 211; Wellsburg & S. L. R. Co. v. Panhandle Traction Co., 56 W. Va. 18, 48 S. E. 746; Daniel v. Simms, 49 W. Va. 554, 39 S. E. 690; Croomes v. State, 40 Tex. Cr. R. 672, 51 S. W. 924; Tylee v. Hyde (Fla.) 52 South. 968; Decker v. Diemer, 229 Mo. 296, 129 S. W. 936; Joplin Supply Co. v. West (Mo. App.) 130 S. W. 156; People v. Gilbert, 68 Misc. Rep. 48, 123 N. Y. Supp. 264; Bacon v. Boston & M. R. R., 83 Vt. 421, 76 Atl. 128. *See "Statutes," Dec. Dig. (Key No.) §§ 184, 185, 213–217; Cent. Dig. §§ 17, 27, 259, 262, 264, 290–293.*

[60] United States v. Jackson, 143 Fed. 783, 75 C. C. A. 41; Lowe v. United States, 38 Ct. Cl. 170 (affirmed 194 U. S. 193, 24 Sup. Ct. 617, 48 L. Ed. 931); Jasper v. United States, 38 Ct. Cl. 202; Village of Iuka v. Schlosser, 97 Ill. App. 222; Robertson v. Dink Bros. Coal & Coke Co., 143 Ill. App. 391; City of Oakland v. Oakland Water Front Co., 118 Cal. 160, 50 Pac. 277; Smith v. Farr, 46 Colo. 364, 104 Pac. 401; In re Intoxicating Liquor Cases, 25 Kan. 751, 37 Am. Rep. 284; City of Emporia v. Norton, 16 Kan. 236; Brown v. Thompson, 14 Bush (Ky.) 538, 29 Am. Rep. 416; Cochran v. Preston, 108 Md. 220, 70 Atl. 113, 23 L. R. A. (N. S.) 1163, 129 Am. St. Rep. 432; Fosburgh v. Rogers, 114 Mo. 122, 21 S. W. 82, 19 L. R. A. 201; In re Crouse, 140 Mo. App. 545, 120 S. W. 666; Neenan v. Smith, 50 Mo. 525; Cole v. Skrainka, 105 Mo. 303, 16 S. W. 491; Kelley v. Gage County, 67 Neb. 6, 93 N. W. 194, 99 N. W. 524; Mason v. Cranbury Tp., 68 N. J. Law, 149, 52 Atl. 568; Caddy v. Interborough Rapid Transit Co., 195 N. Y. 415, 88 N. E. 747; State Mut. Ins. Co. v. Clevenger, 17 Okl. 49, 87 Pac. 583; Brown v. Woods, 2 Okl. 601, 39 Pac. 473; Hidalgo County Drainage Dist. v. Davidson, 102 Tex. 539, 120 S. W. 849; City of Austin v. Cahill, 99 Tex. 172, 88 S. W. 542; Fox's Adm'rs v. Commonwealth, 16 Grat. (Va.) 1; Cherry Point Fish Co. v. Nelson, 25 Wash. 558, 66 Pac. 55; Davis v. State, 134 Wis. 632, 115 N. W. 150; Ross v. State, 16 Wyo. 285, 94 Pac. 217. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

expansive interpretation to the terms of the statute as to make it applicable to cases or persons not within the contemplation or purpose of the law-making body.[61] "Legislatures, like courts, must be considered as using expressions concerning the thing they have in hand, and it would not be a fair method of interpretation to apply their words to subjects not within their consideration, and which, if thought of, would have been more particularly and carefully disposed of." [62] If it is the evident and plain purpose of the act to affect only a particular class of persons, the generality of the language employed will not have the effect of including a single individual not belonging to that class, though the mere words might include him.[63] An act extending the bounds of a town over the adjacent navigable waters does not thereby grant the land covered by the waters to the town, but is merely for the purposes of civil and criminal jurisdiction.[64] Again, where a duty is prescribed by statute, and remedies are provided for the breach of it, which remedies cannot be applied to a particular subject, it may be fairly inferred that the subject was not within the view of the legislature when they exacted the duty. This rule was laid down in a case where the question arose under a state pilotage law, requiring vessels to take on pilots when needed, as on leaving a harbor, and subjecting the master to a penalty for refusing to do so, to be recovered in a private action. It was held that this law could not apply to a war vessel of the United States, refusing to take a pilot or taking an unlicensed pilot, because the remedy

[61] Garrison v. District of Columbia, 30 App. D. C. 515; People v. Sholem, 238 Ill. 203, 87 N. E. 390; Waldharber v. Lunkenheimer, 108 S. W. 327, 32 Ky. Law Rep. 1221; Greenough v. Board of Police Com'rs of City of Providence, 29 R. I. 410, 71 Atl. 806; Mills v. Southern Ry., 82 S. C. 242, 64 S. E. 238; City of Charleston v. Charleston Brewing Co., 61 W. Va. 34, 56 S. E. 198. *See "Statutes," Dec. Dig. (Key No.) §§ 183, 184; Cent. Dig. §§ 261, 262.*

[62] Estate of Ticknor, 13 Mich. 44. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[63] United States v. Saunders, 22 Wall. 492, 22 L. Ed. 736. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[64] Palmer v. Hicks, 6 Johns. (N. Y.) 133. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

could not apply, the commanding officer not being liable, and there being no possibility of recovering the penalty against the United States.[65] On the other hand, it has been held that a statute imposing penalties for "furiously driving any sort of carriage" applies to immoderate speeding on a bicycle. For although a bicycle is not technically a carriage, yet it is within the scope of the act, and within its purpose, which was to prevent injury from the reckless driving of any sort of vehicle or conveyance.[66] And so, where a statute provides that persons conspiring and agreeing together to commit any "crimes punishable by imprisonment in the state prison" shall be liable to a prescribed punishment, the phrase quoted means not only such crimes as must be, but such also as may be, so punished.[67]

Where the inquiry is conducted along these lines, it is a good general rule to follow that it is always to be presumed that the legislature intended the most beneficial construction of their acts.[68] And another important and useful rule is that, where a general policy or purpose is plainly declared in a series or system of statutes, any special provisions in any of the statutes should, if possible, be given a construction which will bring them in harmony with that policy or purpose.[69]

But the ascertainment and application of the legislative purpose should not be made a pretext for disregarding the plain language of the statute, when no ambiguity or real doubt exists. No outside considerations relating to the

[65] Ayers v. Knox, 7 Mass. 306. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[66] Taylor v. Goodwin, L. R. 4 Q. B. Div. 228. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[67] State v. Mayberry, 48 Me. 218. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[68] Richards v. Dagget, 4 Mass. 534. See State v. Redmon, 134 Wis. 89, 114 N. W. 137, 14 L. R. A. (N. S.) 229, 126 Am. St. Rep. 1003, as to the effect of a legislative declaration that a law was enacted for a particular purpose, when the court is called upon to determine its constitutionality. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 184, 212; Cent. Dig. §§ 254, 262, 289.*

[69] City of Cincinnati v. Connor, 55 Ohio St. 82, 44 N. E. 582. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

supposed policy or purpose of the legislature will justify the courts in reading into the statute exceptions which are not authorized by its plain terms, nor in extending it to cases which it plainly was not meant to cover.[70] And as it has been well observed by the court in North Carolina, arguments founded upon the policy of a law, though they are undoubtedly admissible in cases of ambiguity, are to be listened to with much caution; for the interpreters of a law have not the right to judge of its policy, and when they undertake to find out the policy contemplated by the makers of the law, they are in great danger of mistaking their own opinions on that subject for the opinions of those who alone had the right to judge of matters of policy.[71]

CASUS OMISSUS

34. When a statute makes specific provisions in regard to several enumerated cases or objects, but omits to make any provision for a case or object which is analogous to those enumerated, or which stands upon the same reason, and is therefore within the general scope of the statute, and it appears that such case or object was omitted by inadvertence or because it was overlooked or unforeseen, it is called a "casus omissus." Such omissions or defects cannot be supplied by the courts.

It was a maxim of the old law that "casus omissus pro omisso habendus est"; that is, that a case omitted is to be held as intentionally omitted.[72] If the statute is sought to be applied to a case or object which is omitted from its terms, but which appears to be within the obvious purpose

[70] Atlantic Coast Line R. Co. v. United States, 168 Fed. 175, 94 C. C. A. 35; Southern Ry. Co. v. Machinists' Local Union No. 14 (C. C.) 111 Fed. 49. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[71] Roberts v. Cannon, 20 N. C. 398. And see Attorney General v. Parsell, 100 Mich. 170, 58 N. W. 839. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[72] Broom, Max. 46; Trayn. Lat. Max. 67.

or plan of the statute, and so to have been omitted merely by inadvertence or accident, still the courts are not at liberty to add to the language of the law; and it must be held that the legislature intended to omit the specific case, however improbable that may appear in connection with the general policy of the statute.[73] "Where the words of a statute, in their primary meaning, do not expressly embrace the case before the court, and there is nothing in the context to attach a different meaning to them capable of expressly embracing it, the court cannot extend the statute by construction to that case, unless it falls so clearly within the reasons of the enactment as to warrant the assumption that it was not specifically enumerated among those described by the legislature, only because it may have been deemed unnecessary to do so. Where the general intention of the statute embraces the specific case, though it is not enumerated, the statute may nevertheless be applied to it by an equitable construction, in promotion of the evident design of the legislature. But when this is done, it is always presupposed that such a case was within their general contemplation or purview when the statute was enacted; for if the case be omitted in the statute because not foreseen or contemplated, it is a casus omissus, and the court, having no legislative power, cannot supply the defects of the enactment." [74] "Courts of justice can give effect to legislative enactments only to the extent to which they may be made operative by a fair and liberal construction of the language used. It is not their province to supply defective enactments by an attempt to carry out fully the purposes

[73] Jones v. Smart, 1 Durn. & E. 44, 52; Jacob v. United States, 1 Brock. 520, Fed. Cas. No. 7,157; Peter's Lessee v. Condron, 2 Serg. & R. (Pa.) 80; Moore v. City of Indianapolis, 120 Ind. 483, 22 N. E. 424; Scaggs v. Baltimore & W. R. Co., 10 Md. 268; State ex rel. Mickey v. Reneau, 75 Neb. 1, 106 N. W. 451; In re Contest Proceedings, 31 Neb. 262, 47 N. W. 923, 10 L. R. A. 803; Holmberg v. Jones, 7 Idaho, 752, 65 Pac. 563; Braxton v. Winslow, 1 Wash. (Va.) 31; Gring v. Lake Drummond Canal & Water Co., 110 Va. 754, 67 S. E. 360. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

[74] Hull v. Hull, 2 Strob. Eq. (S. C.) 174. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

which may be supposed to have occasioned those enactments. This would be but an assumption by the judicial of the duties of the legislative department." [75]

For example, if an act empowers a married woman to sue, but does not authorize her to be sued apart from her husband, no action lies against her.[78] In an English case, it appeared that a statute provided that "if loss of life to any person employed in a coal mine occurs by reason of any accident within such mine, or if any serious personal injury arises from explosion therein, the owner of such mine shall, within twenty-four hours next after such loss of life, send notice of such accident" to an inspector, or be liable to a penalty. An accident having occurred which caused serious personal injury but not loss of life, it was contended that the owner of the mine ought to have sent notice of the accident, for it was argued that it was quite clear that there was an accidental omission after the words "such loss of life," and that the legislature must have intended to insert the words "or such serious personal injury," for otherwise the words "if any serious personal injury arises from explosion therein" would be wholly inoperative. But the court declined to imply that these words had been omitted by accident, for "we cannot," said the court, "take upon ourselves the office of the legislature." [77] So again, an act which authorizes a municipal corporation to open and widen streets according to the procedure therein described, and then prescribes no procedure for cases of widening streets, is to that extent inoperative.[78] And a statute which directs the comptroller to issue warrants upon the treasury, for costs chargeable upon the state, in favor of the judge of the county court, to be paid over to the county trustee, is inoperative and void, if no provision

[75] Swift v. Luce, 27 Me. 285. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

[76] Hancocks v. Lablache, L. R. 3 C. P. Div. 197. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

[77] Underhill v. Longridge, 29 Law T. (N. S.) Mag. Cas. 65. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

[78] Chaffee's Appeal, 56 Mich. 244, 22 N. W. 871. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

is made for the payment of this money out of the county treasury.[78] The rule which forbids the supplying of a casus omissus by construction has a more peculiarly stringent effect in the case of enactments creating penal or criminal offenses.[80]

Indeed, it is not difficult to discover, in the later cases, a strong disposition of the courts to confine this rule to statutes which require a strict interpretation on account of their penal character, and to reject it in the case of remedial laws.[81] Courts have often chafed against the rule of "casus omissus," conceiving it to be arbitrary in character, and often better fitted to thwart the evident purpose of the legislature than to effect it; and it is probable that many of the cases in which this rule was formerly applied would now be decided differently. It may be conceded, as ruled by the Supreme Court of Virginia, that words omitted from a statute, which can be clearly ascertained from the context, should be supplied by the court, and the statute read and interpreted as if the words were in it.[82] But a much more decided rejection of the rule under consideration is manifested in a late decision in Indiana, which holds that, where a statute deals with a genus, and a thing which afterwards comes into existence is a species thereof, the language of the statute should generally be extended to the new species, though it was not known or could not have been contemplated by the legislature when the act was passed.[83]

[78] Pillow v. Gaines, 3 Lea (Tenn.) 466. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

[80] Broadhead v. Holdsworth, L. R. 2 Ex. Div. 321; State v. Peters, 37 La. Ann. 730. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

[81] Rural Independent School Dist. No. 10 v. New Independent School Dist., 120 Iowa, 119, 94 N. W. 284; Lowe v. Phelps, 14 Bush (Ky.) 642; Landrum v. Flannigan, 60 Kan. 436, 56 Pac. 753. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

[82] Harman v. Howe, 27 Grat. (Va.) 676. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

[83] McCleary v. Babcock, 169 Ind. 228, 82 N. E. 453. *See "Statutes," Dec. Dig. (Key No.) § 186; Cent. Dig. § 265.*

IMPLICATIONS IN STATUTES

35. Every statute is understood to contain, by implication, if not by its express terms, all such provisions as may be necessary to effectuate its object and purpose, or to make effective the rights, powers, privileges, or jurisdiction which it grants, and also all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.[84]

Doctrine of Implications

Statutes are seldom framed with such minute particularity as to give directions for every detail which may be involved in their practical application. Herein they are aided by the doctrine of implications. This doctrine does not empower the courts to go to the length of supplying things which were intentionally omitted from the act. But it authorizes them to draw inferences, from the general meaning and purpose of the legislature, and from the necessity of making the act operative and effectual, as to those minor or more specific things which are included in the more broad or general terms of the law, or as to those consequences of the enactment which the legislature must be understood to have foreseen and intended. This is not the making of law by the judges. It is educing the will of the legislature by the logical process of inference. "It is a rule of construction that that which is implied in a statute is as much a part of it as what is expressed." [85] And as a statute must

[84] Great Northern Ry. Co. v. United States, 155 Fed. 945, 84 C. C. A. 93 (affirmed 208 U. S. 452, 28 Sup. Ct. 313, 52 L. Ed. 567); Bailey v. State, 163 Ind. 165, 71 N. E. 655; State ex rel. Utick v. Board of Com'rs of Polk County, 87 Minn. 325, 92 N. W. 216, 60 L. R. A. 161; Board of Com'rs of Logan County v. Harvey, 6 Okl. 629, 52 Pac. 402; Hogan v. Piggott, 60 W. Va. 541, 56 S. E. 189; Wakefield v. Brophy, 67 Misc. Rep. 298, 122 N. Y. Supp. 632; City of Chicago v. Pittsburgh, C., C. & St. L. R. Co., 146 Ill. App. 403 (affirmed 242 Ill. 30, 89 N. E. 648); United States v. Allen, 179 Fed. 13, 103 C. C. A. 1. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[85] Hanchett v. Weber, 17 Ill. App. 114; Coonce v. Munday, 3

always be construed with reference to the pre-existing law, it will often happen that many details are to be inferred from the general language of the act, which are understood as necessarily involved in it though not enumerated. For example, if a statute creates a new felony, or makes an act a felony which was before innocent, the new crime will necessarily possess all the incidents which appertain to felony by the rules and principles of the common law. Thus, by necessary implication, all persons who procure or abet the commission of the crime will be principals or accessaries under the same circumstances which would make them such in a felony by the common law.[86]

What are "Necessary" Implications

It will be noticed as an essential part of this rule that the only implications which can be read into a statute are those which are "necessary," not such as may be merely plausible, nor such as may appear to the court to be desirable or beneficial. A necessary implication is one which, under all the circumstances, is compelled by a reasonable view of the statute, and the contrary of which would lead to such improbable results as to constitute a legal absurdity. The "necessity" intended is not, of course, physical nor necessarily natural; but it is so strong a probability of intention that a contrary intention cannot reasonably be supposed.[87]

Remedies Implied from Statute

As a general principle, whenever a statute creates a new duty or obligation, or prohibits an act which was previously lawful, it also gives, by implication, a corresponding remedy to secure its observance, which remedy may appertain either to the public, when a breach of public duty results

Mo. 373; State v. Harden, 62 W. Va. 313, 58 S. E. 715. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[86] Coalheavers' Case, 1 Leach, C. L. 64. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264; "Criminal Law," Dec. Dig. (Key No.) § 11; Cent. Dig. §§ 10–12.*

[87] Gilbert v. Craddock, 67 Kan. 346, 72 Pac. 869; Commonwealth v. Kimball, 24 Pick. (Mass.) 366. And see, as to the analogous case of wills, Wilkinson v. Adam, 1 Ves. & B. 466; Whitfield v. Garris, 134 N. C. 24, 45 S. E. 904. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

from the violation of the act, or to a private person, when he sustains injury by the same violation, and sometimes to both the public and the individual. Thus, it is a general rule of the common law that where a statute prohibits a matter of public grievance, or commands a matter of public convenience, and no special mode of prosecution for a violation of the statute is prescribed, it may be prosecuted by indictment.[88] So, when a remedial statute does not point out the manner in which it shall be enforced, in respect to private rights, an action lies in favor of the party aggrieved, by implication.[89] But when a statute gives a new right or a new power, if it provides a specific, full, and adequate mode of executing the power or enforcing the right given, the fact that a particular mode is prescribed will be regarded as excluding, by implication, the right to resort to any other mode of executing the power or of enforcing the right. Thus, if the charter of a municipal corporation gives it the power to enforce payment of its taxes by a sale of the land on which they are assessed, in accordance with the usual method of tax sales, it will not be permissible for the municipality to bring suit at law against the owner for the amount of the taxes.[90] But "where the design is to give additional protection to a subsisting right, and a remedy is provided for its invasion, which is not necessarily exclusive of all others, it is considered as merely cumulative, and the party injured may resort to it, or to the means previously allowed, for redress." [91] And if the remedy given by the statute is not adequate, there will be no implication that it

[88] Colburn v. Swett, 1 Metc. (Mass.) 232; People v. Stevens, 13 Wend. (N. Y.) 341. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264; "Indictment and Information," Dec. Dig. (Key No.) §§ 1–4; Cent. Dig. §§ 1–27.*

[89] Com. Dig. "Action upon Statute," A. 1; Van Hook v. Whitlock, 2 Edw. Ch. (N. Y.) 304; Bullard v. Bell, 1 Mason, 243, 290, Fed. Cas. No. 2,121. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[90] Johnston v. City of Louisville, 11 Bush (Ky.) 527. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[91] Smith v. Lockwood, 13 Barb. (N. Y.) 209; Van Sickle v. Belknap, 129 Ind. 558, 28 N. E. 305. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

was intended to be exclusive, and resort may be had, for the execution of the power or the enforcement of the right, to the ordinary process of the law.[92] Where a statute creates a duty with the object of preventing a mischief of a particular kind, a person who, by reason of another's neglect of the statutory duty, suffers loss or injury of the kind contemplated by the statute, may have redress; but if he suffers a loss of a different kind, though it resulted from a breach of statutory duty, he is not entitled to maintain an action in respect of such loss.[93] And the fact that a statute gives half a penalty to the complainant does not import authority to bring an action for the penalty in his own name.[94]

Illegality of Contract Implied from Statutory Prohibition

Where a statute prohibits anything to be done, an act done in contravention of the prohibition must be adjudged void and inoperative; and this is necessary because the statute must be made effectual to accomplish the object intended by its enactment.[95] Hence it follows that if a law imposes a penalty upon any person who shall do a given act, this implies a prohibition of the act in question; and any contract or agreement which involves the doing of the prohibited act is tainted, in respect to its consideration, by the statutory illegality, and will not be enforced by the courts.[96] "Every contract made for or about any matter or thing which is prohibited and made unlawful by any

[92] Johnston v. City of Louisville, 11 Bush (Ky.) 527. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[93] Gorris v. Scott, L. R. 9 Ex. 125. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[94] Smith v. Look, 108 Mass. 139. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[95] Nelson v. Denison, 17 Vt. 73. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[96] Stevens v. Gourley, 7 C. B. (N. S.) 99; O'Brien v. Dillon, 9 Ir. C. L. (N. S.) 318; Cope v. Rowlands, 2 Mees. & W. 149; Clark v. Protection Ins. Co., 1 Story, 109, Fed. Cas. No. 2,832; Skelton v. Bliss, 7 Ind. 77; Bacon v. Lee, 4 Iowa, 490; Lewis v. Welch, 14 N. H. 294; Hallett v. Novion, 14 Johns. (N. Y.) 273; Mitchell v. Smith, 1 Bin. (Pa.) 110, 2 Am. Dec. 417. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264; "Contracts," Dec. Dig. (Key No.) §§ 135–140; Cent. Dig. §§ 681–721.*

statute is a void contract, although the statute itself doth not mention that it shall be so, but only inflicts a penalty on the offender; because a penalty implies a prohibition, though there are no prohibitory words in the statute." [97] The fundamental principle of public policy on which this rule rests is expressed in the maxim "ex dolo malo non oritur actio." For example, where a statute imposes a penalty on any person who practices the profession of surgery without being duly admitted, this is a prohibition against such practicing by an unlicensed person, and it disables him from recovering for work and labor done as such.[98] And especially where the statute is made with a view to the protection of the public health or morals, or to the prevention of frauds by the seller of a given article, though there be nothing but a penalty prescribed, a contract which infringes the statute cannot be supported. Thus, when the statute prohibits the sale of intoxicating liquors except by a person holding a license or permit, or prohibits the sale altogether, a sale made by a person not so protected, or made under any other circumstances amounting to a violation of law, is void, and the seller cannot maintain an action against the purchaser for the price or value.[99] And on the same principle, no action can be maintained on a promissory note given for the price of liquors sold by the payee in violation of law.[100] But here it is necessary for the reader to remember that if a contract, thus tainted with illegality, has been executed, the law will leave the parties where it finds them, and will not allow the person who has

[97] Bartlett v. Vinor, Carth. 251. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[98] D'Allex v. Jones, 2 Jur. (N. S.) 979. *See "Physicians and Surgeons," Dec. Dig. (Key No.) § 22; Cent. Dig. § 51.*

[99] Griffith v. Wells, 3 Denio (N. Y.) 226; Cobb v. Billings, 23 Me. 470; Bancroft v. Dumas, 21 Vt. 456; Jones v. Surprise, 64 N. H. 243, 9 Atl. 384; Loranger v. Jardine, 56 Mich. 518, 23 N. W. 208. *See "Intoxicating Liquors," Dec. Dig. (Key No.) § 329; Cent. Dig. §§ 474–481.*

[100] Turck v. Richmond, 13 Barb. (N. Y.) 533; Glass v. Alt, 17 Kan. 444. *See "Intoxicating Liquors," Dec. Dig. (Key No.) § 327; Cent. Dig. §§ 467–473.*

parted with a consideration for the illegal act to recover it back, unless it be by the help of a statute.[101]

Statutory Grant of Powers or Privileges

Whenever powers, privileges, or property are granted by a statute, everything indispensable to their enjoyment or exercise is impliedly granted also, as it would be in a grant between private persons.[102] This rule finds an important application in relation to the powers of corporations. It has been said: "In this country, all corporations, whether public or private, derive their powers from legislative grant, and can do no act for which authority is not expressly given or may not be reasonably inferred. But if we were to say that they can do nothing for which a warrant could not be found in the language of their charters, we should deny them, in some cases, the power of self-preservation as well as many of the means necessary to effect the essential objects of their incorporation. And therefore it has been an established principle in the law of corporations that they may exercise all the powers within the fair intent and purpose of their creation which are reasonably proper to effect the powers expressly granted." [103] It has even been held, in England, that a corporation may be created by implication. Thus, where trustees were appointed by statute, to perform duties which would necessarily continue without limit of time, it was held that, from the nature of the pow-

[101] Ellsworth v. Mitchell, 31 Me. 247; Holman v. Johnson, Cowp. 341. *See "Contracts," Dec. Dig. (Key No.) § 138; Cent. Dig. §§ 681–700.*

[102] Stief v. Hart, 1 N. Y. 20, 30; Sahm v. State, 172 Ind. 237, 88 N. E. 257; Newcomb v. City of Indianapolis, 141 Ind. 451, 40 N. E. 919, 28 L. R. A. 732; State v. Barr, 173 Ind. 446, 88 N. E. 604; Heard v. Pierce, 8 Cush. (Mass.) 338, 54 Am. Dec. 757; State ex rel. Watts v. Cain, 78 S. C. 348, 58 S. E. 937; Brown v. Clark, 102 Tex. 323, 116 S. W. 360, 24 L. R. A. (N. S.) 670; Callaghan v. McGown (Tex. Civ. App.) 90 S. W. 319. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[103] City of Bridgeport v. Housatonic R. Co., 15 Conn. 475, 501. And see 1 Cook, Corp. § 3; Clark, Corp. pp. 122–125. *See "Corporations," Dec. Dig. (Key No.) §§ 370–374; Cent. Dig. §§ 1511–1524.*

ers given to them, they were impliedly made a corporation.[104] Whenever the statute grants power to do an act, with an unrestricted discretion as to the manner of executing the power, all reasonable and necessary incidents in the manner of executing the power are also granted.[105] For instance, where a municipal corporation has lawfully created a debt, it has the implied power, unless restrained by its charter or a statute, to evidence the same by bill, bond, note, or other instrument. The power to contract the debt implies the right to issue the proper acknowledgment therefor.[106] So, when a statute directs a thing to be done, it authorizes the performance of whatever is necessary to execute its commands. Thus, an act increasing the salaries of municipal officers imposes upon the municipality the increased burden consequent thereon, though in terms no provision to meet it is made.[107] And again, the concession of privileges or powers often carries with it implied obligations. For instance, an act which gives a power to dig up the soil of streets for a particular purpose, such as making a drain or sewer, impliedly casts on those thus empowered the duty of filling up the ground again and of restoring the street to its original condition.[108] So also, authority given by statute to build and maintain a bridge virtually implies an obligation to keep the bridge in good traveling and business condition, so long as the proprietors are in the use and enjoyment of the privileges of the grant.[109]

[104] Ex parte Newport Marsh Trustees, 16 Sim. 346. *See "Corporations," Dec. Dig. (Key No.) §§ 1, 31; Cent. Dig. §§ 1, 3–6, 101, 102.*

[105] People v. Eddy, 57 Barb. (N. Y.) 593. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[106] City of Williamsport v. Commonwealth ex rel. Bair, 84 Pa. 487, 24 Am. Rep. 208. *See "Municipal Corporations," Dec. Dig. (Key No.) §§ 897, 906, 908; Cent. Dig. §§ 1881, 1882, 1894, 1896.*

[107] Green v. Mayor, etc., of New York, 2 Hilt. (N. Y.) 203. See *"Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[108] Gray v. Pullen, 5 Best & S. 970. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[109] People v. Cooper, 6 Hill (N. Y.) 516. *See "Bridges," Dec. Dig. (Key No.) § 21; Cent. Dig. § 48.*

Statutory Grant of Jurisdiction

Jurisdiction may be created or conferred by implication. "While an unfounded assumption by the legislature that a particular jurisdiction existed might not alone be sufficient to create it, yet where the jurisdiction is assumed to exist, and explicit provisions made as to the form and mode of its exercise, the authority to proceed in that form and mode carries with it, by necessary implication, jurisdiction of the proceedings." [110] And where an act confers a jurisdiction, it impliedly grants also the power of doing all such acts, or employing such means, as are essentially necessary to its execution. "Cui jurisdictio data est, ea quoque concessa esse videntur sine quibus jurisdictio explicari non potuit." [111] Thus, the authority to punish for contempt is granted as a necessary incident in establishing a tribunal as a court.[112] And where a statute gives to an inferior court the power to issue the writ of injunction, it must be understood as impliedly carrying with it the power to punish disobedience to the writ by commitment.[113] So also, the power to grant temporary alimony belongs to the courts as an incident to their jurisdiction over divorces.[114] And a grand jury, in execution of their general powers, and without special authority therefor, have the power, when a witness who was duly summoned appears before them, but refuses to be sworn and behaves in a disrespectful manner towards the jury, to require the officer in attendance upon them to take the witness before the court, in order to obtain its aid and direction in the matter.[115] But in giving

[110] State v. Miller, 23 Wis. 634. *See "Courts," Dec. Dig. (Key No.) §§ 1, 2; Cent. Dig. §§ 1–9, 91–106.*

[111] Dig. 2, 1, 2; People v. Hicks, 15 Barb. (N. Y.) 153. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[112] United States v. New Bedford Bridge, 1 Woodb. & M. 401, 440, Fed. Cas. No. 15,867. *See "Contempt," Dec. Dig. (Key No.) §§ 30–36; Cent. Dig. §§ 91–109.*

[113] Ex parte Martin, L. R. 4 Q. B. Div. 212. *See "Injunction." Dec. Dig. (Key No.) § 229; Cent. Dig. §§ 496–501.*

[114] Goss v. Goss, 29 Ga. 109. *See "Divorce," Dec. Dig. (Key No.) § 200; Cent. Dig. §§ 587–590.*

[115] Heard v. Pierce, 8 Cush. (Mass.) 338, 54 Am. Dec. 757. *See "Grand Jury," Dec. Dig. (Key No.) § 36; Cent. Dig. §§ 75–78.*

judicial powers to affect prejudicially the rights of persons or property, a statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be exercised in accordance with the fundamental rules of judicial procedure, such, for instance, as that which requires that, before its exercise, the person sought to be prejudicially affected shall have an opportunity of defending himself.[116] And so, where the legislature prescribes the mode by which private property may be taken for public use, the court will presume that it intends that notice of the appropriation shall be given to the parties to be affected, although the statute may not have said so in express terms. This requirement will be read in by implication. For it will not be supposed that the legislature designed to violate the principles of right and justice.[117]

Subsidiary and Collateral Implications

All those minor directions and details which are not specified in the statute, but are involved in its general terms, will be filled in, by implication, whenever it is necessary in order to give the law an effective operation. This is not adding to the act provisions which the legislature did not contemplate, but evolving from its broad terms those particular provisions which are necessarily included within its general purpose and tenor. Thus, for example, when a statute requires a notice to be given, or any other similar thing to be done, but does not specify the period of time within which it must be done, it will be construed to mean a reasonable time, depending upon the situation of the parties and the nature of the thing to be performed.[118] So, again, when the statute directs notice of facts to be published in a newspaper, the courts will pre-

[116] Maxwell, Interp. (2d Ed.) 443; Bagg's Case, 11 Coke, 93b. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 185.*

[117] City of Boonville v. Ormrod's Adm'r, 26 Mo. 193. *See "Eminent Domain," Dec. Dig. (Key No.) §§ 179–184; Cent. Dig. §§ 488–498.*

[118] Burden v. Stein, 25 Ala. 455; Moore v. Fields, 1 Or. 317. *See "Process," Dec. Dig. (Key No.) § 21; Cent. Dig. § 16.*

sume, in the absence of any legislative intimation to the contrary, that the notice is to be given in English, that being the ordinary language of the state, and in a newspaper published in the same tongue.[119]

Limitations of Doctrine of Implications

The extension, or evolution, of a statute by implication is to be confined to its strictly necessary incidents or logical consequences. When, for instance, an act requires the performance of a public service, it implies no provision that the person performing it shall be remunerated.[120] So, where the legislature specifies, as compensation for acts to be done by a public officer of a certain county, less than the usual amount, this raises no presumption that the claim for that compensation is to have precedence of others.[121] Again, a statute which empowers married women to contract debts for necessaries does not validate a bond and warrant of attorney to confess judgment made by a married woman for such a debt.[122] And where a statute exempts a husband from liability for his wife's antenuptial debts, and provides that she may be sued therefor and that her separate property shall be liable for such debts, this gives no jurisdiction or authority to adjudicate her a bankrupt.[123] And a statute which merely authorizes a judge to refer matters to arbitration does not confer upon the arbitrators power to administer oaths.[124] In these cases, it will be observed, none of the provisions sought to be added

[119] City Publishing Co. v. Mayor, etc., of Jersey City, 54 N. J. Law, 437, 24 Atl. 571; Wilson v. Inhabitants of City of Trenton, 56 N. J. Law, 469, 29 Atl. 183; Road in Upper Hanover, 44 Pa. 277. *See "Newspapers," Dec. Dig. (Key No.) § 3; Cent. Dig. §§ 16–19.*

[120] Jones v. Carmarthen, 8 Mees. & W. 605. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

[121] People ex rel. Benham v. Williams, 8 Cal. 97. *See "Officers," Dec. Dig. (Key No.) § 101; Cent. Dig. §§ 158–162.*

[122] Glyde v. Keister, 32 Pa. 85. *See "Husband and Wife," Dec. Dig. (Key No.) § 61; Cent. Dig. § 281.*

[123] Ex parte Holland, L. R. 9 Ch. App. 307. *See "Bankruptcy," Dec. Dig. (Key No.) § 67; Cent. Dig. §§ 17–87.*

[124] Regina v. Hallett, 2 Den. & P. C. C. 237. *See "Oath," Dec. Dig. (Key No.) § 2; Cent. Dig. §§ 2–10.*

by implication were necessary to make the statute effective or to accomplish the objects which it was designed to subserve; nor were they necessarily involved in the general terms of the statute, in any such sense as to make it logically necessary to suppose that the legislature foresaw and intended them. But it is also a rule that no limitation is to be inferred or implied which would have the effect to defeat the object of the law. For instance, if a certain sum of money is appropriated for the erection of public buildings which must necessarily cost several times that amount, this is not to be construed into a limitation as to the expenditure.[125] And again, every legislative grant is understood to be made with the implied reservation that it shall not work injury to the property or rights of other persons.[126]

WHEN GOVERNMENT IS BOUND BY STATUTES

36. General words in a statute do not include nor bind the government by whose authority the statute was enacted, where its sovereignty, rights, prerogatives, or interests are involved. It is bound only by being expressly named or by necessary implication from the terms and purpose of the act.

This is a very ancient rule of the English law, and is equally applicable to the national and state governments in this country. It is said that laws are supposed to be made for the subjects or citizens of the state, not for the sovereign power. Hence, if the government is not expressly referred to in a given statute, it is presumed that it was not intended to be affected thereby, and this presumption, in any case where the rights or interests of the state would be involved, can be overcome only by clear

[125] Cook v. Com'rs of Hamilton Co., 6 McLean, 112, Fed. Cas. No. 3,157. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264; "Counties," Dec. Dig. (Key No.) § 150; Cent. Dig. § 215.*

[126] Pittsburg & C. R. Co. v. South West Pennsylvania R. Co., 77 Pa. 173. *See "Statutes," Dec. Dig. (Key No.) § 185; Cent. Dig. §§ 17, 27, 264.*

and irresistible implications from the statute itself.[127] Generally speaking, therefore, the state is not bound by the provisions of any statute, however generally it may be expressed, by which its sovereignty would be derogated from, or any of its prerogatives, rights, titles, or interests would be divested, save where the act is specifically made to extend to the state, or where the legislative intention in that regard is too plain to be mistaken.[128] For example, where a statute enacts that "costs shall follow the event of every action or petition, unless otherwise directed by law or by the court," no costs can be recovered against the state by a party prevailing against it in any civil action.[129] So also, a claim of the government against a private person is not affected by his discharge in bankruptcy, although the bankrupt law provides in general terms that the discharge shall release the bankrupt "from all debts, claims, liabilities, and demands," and that it may be pleaded "as a full and complete bar of any such debts," etc.[130] For the same reason, it is well settled that the provisions of a statute of limitations do not run against the

[127] Crooke's Case, 1 Shower, 208; Attorney General v. Donaldson, 10 Mees. & W. 117; United States v. Hewes, Crabbe, 307, Fed. Cas. No. 15,359; State v. Milburn, 9 Gill (Md.) 105; Cole v. White County, 32 Ark. 45. *See "Statutes," Dec. Dig. (Key No.) § 233; Cent. Dig. § 314.*

[128] Magdalen College Case, 11 Coke, 66b; Perry v. Eames (1891) 1 Chanc. 658; Lambert v. Taylor, 4 Barn. & C. 138; State v. Kinne, 41 N. H. 238; Union Trust Co. of San Francisco v. State, 154 Cal. 716, 99 Pac. 183, 24 L. R. A. (N. S.) 1111; De Kalb County v. City of Atlanta, 132 Ga. 727, 65 S. E. 72; Title Guaranty & Surety Co. v. Guarantee Title & Trust Co., 174 Fed. 385, 98 C. C. A. 603; Banton v. Griswold, 95 Me. 445, 50 Atl. 89; A. L. & E. F. Goss Co. v. Greenleaf, 98 Me. 436, 57 Atl. 581. *See "Statutes," Dec. Dig. (Key No.) § 233; Cent. Dig. § 314.*

[129] State v. Kinne, 41 N. H. 238; Sandberg v. State, 113 Wis. 578, 89 N. W. 504; Commonwealth v. Lyon, 72 S. W. 323, 24 Ky. Law Rep. 1747; State v. Buckman, 95 Minn. 272, 104 N. W. 289; State v. Williams, 101 Md. 529, 61 Atl. 297, 1 L. R. A. (N. S.) 254, 109 Am. St. Rep. 579; Haley v. Sheridan, 190 N. Y. 331, 83 N. E. 296; State v. Bradford Sav. Bank & Trust Co., 71 Vt. 234, 44 Atl. 349. *See "States," Dec. Dig. (Key No.) § 111; Cent. Dig. § 110.*

[130] United States v. Herron, 20 Wall. 251, 22 L. Ed. 275. *See "Bankruptcy," Dec. Dig. (Key No.) § 421; Cent. Dig. §§ 772–807.*

state, as they do against a private suitor, unless the state is expressly named in the statute and its rights waived.[131] Neither is the state affected by tax laws unless expressly named; that is to say, statutes imposing taxation in general terms are not understood as authorizing the assessment of taxes upon the property of the state, real or personal, or of its municipal subdivisions.[132] On the same principle, a grant of power to a private corporation to take

[131] Glover v. Wilson, 6 Pa. 290; Alexander v. State, 56 Ga. 478; City of Jefferson v. Whipple, 71 Mo. 519; Josselyn v. Stone, 28 Miss. 753. This specific rule is expressed in the maxim "nullum tempus occurrit regi." The statute of limitations of a state does not run against the United States. United States v. Hoar, 2 Mason, 311, Fed. Cas. No. 15,373. See, also, Wasteney v. Schott, 58 Ohio St. 410, 51 N. E. 34; State ex rel. Goodman v. Halter, 149 Ind. 292, 47 N. E. 665; Louisville & N. R. Co. v. Smith, 125 Ky. 336, 101 S. W. 317, 128 Am. St. Rep. 254; Commonwealth v. Haly, 106 Ky. 716, 51 S. W. 430. *See "Limitation of Actions," Dec. Dig. (Key No.) § 11; Cent. Dig. §§ 35–39.*

[132] People v. Doe G. 1034, 36 Cal. 220; Trustees of Richmond County Academy v. City Council of Augusta, 90 Ga. 634, 17 S. E. 61, 20 L. R. A. 151; People v. Chicago, 216 Ill. 537, 75 N. E. 239; McCaslin v. State ex rel. Auditor of State, 99 Ind. 428; Bradford v. Lafargue, 30 La. Ann. 432; Stetson v. Grant, 102 Me. 222, 66 Atl. 480; Sanborn v. City of Minneapolis, 35 Minn. 314, 29 N. W. 126; Franklin Street Society v. Manchester, 60 N. H. 342; State v. Griftner, 61 Ohio St. 201, 55 N. E. 612; Troutman v. May, 33 Pa. 455; People ex rel. Smith v. Miller, 94 App. Div. 567, 88 N. Y. Supp. 253; Hornsey Urban Council v. Hennell, [1902] 2 K. B. 73; Quirt v. Queen, 19 Can. Sup. Ct. 510. "The immunity of the property of a state, and of its political subdivisions, from taxation, does not result from a want of power in the legislature to subject such property to taxation. The state may, if it sees fit, subject its property and the property of its municipal divisions to taxation, in common with other property within its territory. But inasmuch as taxation of public property would necessarily involve other taxation, for the payment of the taxes so laid, and thus the public would be taxing itself in order to raise money to pay over to itself, the inference of law is that the general language of statutes prescribing the property which shall be taxable is not applicable to the property of the state or its municipalities. Such property is therefore, by implication, excluded from the operation of laws imposing taxation, unless there is a clear expression of intent to include it." Trustees for Support of Public Schools v. Inhabitants of City of Trenton, 30 N. J. Eq. 667. *See "Taxation," Dec. Dig. (Key No.) §§ 173–190; Cent. Dig. §§ 295–306.*

lands for its uses under the power of eminent domain will not be construed as authorizing it to appropriate property belonging to the state or a municipality, or such as is already held and used for another public purpose, unless such a construction is required by the very words of the grant or by necessary implication.[133] For similar reasons it is held that public buildings, constructed by the state or a municipality for public purposes and not for pecuniary profit, are not within a statute giving a mechanic's lien on buildings generally, unless expressly named as included.[134]

But there are also some cases in which the sovereign will be bound by a statute without express words. In the early and leading case called the "Magdalen College Case," [135] Lord Coke specified three kinds of statutes which would bind the crown although not specially named in them. These were: First, "general statutes which provide necessary and profitable remedy for the maintenance of religion, the advancement of good learning, and the relief of the poor." Second, statutes for the suppression of wrong. "The king shall not be exempted by construction of law out of the general words of acts made to suppress wrong, because he is the fountain of justice and common right." Third, statutes of such a nature that their general words must be held to include the king, in order to perform the will of a founder or donor. These rules have never been authoritatively disavowed by the courts.[136] But the

[133] Commonwealth v. Erie & N. E. R. Co., 27 Pa. 339, 67 Am. Dec. 471; Little Miami & C. & X. R. Co. v. City of Dayton, 23 Ohio St. 510; Mayor, etc., of Jersey City v. Montclair R. Co., 35 N. J. Law, 328. *See "Eminent Domain," Dec. Dig. (Key No.) § 46; Cent. Dig. §§ 91–93.*

[134] A. L. & E. F. Goss Co. v. Greenleaf, 98 Me. 436, 57 Atl. 581. *See "Mechanics' Liens," Dec. Dig. (Key No.) § 13; Cent. Dig. §§ 14, 15.*

[135] 11 Coke, 66b.

[136] A recent writer, after reviewing several cases, observes: "These are the principal cases in which it has been held that the crown is bound by statutes without being named in them. These cases are scarcely sufficient in number or variety to justify the very general adoption of the propositions propounded by Lord Coke in the Magdalen College Case, with regard to the kinds of statutes by which the crown is bound without being named; at the same time

modern tendency is to draw the line of distinction at the point where the sovereign powers or the legal rights of the government begin to be affected. "It is said," observes Maxwell, "that the rule does not apply when the act is made for the public good, the advancement of religion and justice, the prevention of fraud, or the suppression of injury and wrong. But it is probably more accurate to say that the crown is not excluded from the operation of a statute where neither its prerogative, rights, nor property are in question." [137] Thus, in general, the rule does not apply to acts of legislation which lay down general rules of procedure in civil actions.[138] And the government is bound by statutes which are designed to prevent tortious usurpations and to regulate and preserve the right of elections.[139] And in Georgia it has been held that the state is bound by acts of the legislature exempting certain articles of property from levy and sale on execution, for the benefit of the family of the debtor; and such property cannot be seized and sold under execution to pay the taxes due by the debtor.[140]

It must also be observed that although the state is not to be bound without express words or necessary implication, the same reasons do not apply when the question is as to the right of the state to take the benefit of a new law not expressly made for its advantage. Here the presumption is rather the other way; and the courts incline to give

there does not seem to be any case in which Lord Coke's propositions are either denied or overruled." Hardcastle, Stat. Law (2d Ed.) 419.

[137] Maxwell, Interp. (2d Ed.) 166. And see City of Milwaukee v. McGregor, 140 Wis. 35, 121 N. W. 642. *See "Statutes," Dec. Dig. (Key No.) § 233; Cent. Dig. § 314.*

[138] Green v. United States, 9 Wall. 655, 19 L. Ed. 806. But in Schuyler County v. Mercer County, 9 Ill. 20, it is said that ordinarily a statute which, in general terms, speaks of plaintiffs or defendants, applies to persons only, and not to states, counties, or municipal corporations. *See "Statutes," Dec. Dig. (Key No.) § 233; Cent. Dig. § 314.*

[139] Commonwealth ex rel. Attorney-General v. Garrigues, 28 Pa. 9, 70 Am. Dec. 103. *See "Statutes," Dec. Dig. (Key No.) § 233; Cent. Dig. § 314.*

[140] Doe ex dem. Gladney v. Deavors, 11 Ga. 79. *See "Taxation," Dec. Dig. (Key No.) § 576; Cent. Dig. § 1162.*

the government the benefit of new rights and remedies wherever applicable. When general rights are declared or remedies given by statute, the government is generally to be included, though not named. "If a new mode were provided by law for securing or recovering a debt, for getting possession of real estate, or the like, the commonwealth would have the benefit of such new remedy, when applicable, though expressed in general terms." [141] So, also, the state is within a statute which makes it a criminal offense to make or alter a public record, falsely or fraudulently, with the intent that any "person" may be defrauded; that is, if it is done with intent to defraud the state, it is punishable under the act.[142]

Municipal Corporations

In the absence of express statutory provisions to the contrary, the statute of limitations will run against the municipal corporations of a state, the same as against a natural person, at least so far as regards all matters which are not of a purely public nature or connected with the public trusts which the municipality is to administer; as to the latter, there is some doubt.[143]

[141] Commonwealth v. Boston & Maine R. Co., 3 Cush. (Mass.) 25. *See "Statutes," Dec. Dig. (Key No.) § 233; Cent. Dig. § 314.*

[142] Martin v. State, 24 Tex. 61. *See "Forgery," Dec. Dig. (Key No.) § 15; Cent. Dig. § 50.*

[143] See City of Wheeling v. Campbell, 12 W. Va. 36; Evans v. Erie County, 66 Pa. 222; County of St. Charles v. Powell, 22 Mo. 525, 66 Am. Dec. 637; City of Pella v. Scholte, 24 Iowa, 283, 95 Am. Dec. 729; Houston & T. C. Ry. Co. v. Travis County, 62 Tex. 16; City of Jefferson v. Whipple, 71 Mo. 519; 2 Dillon, Munic. Corp. (4th Ed.) § 675. *See "Limitation of Actions," Dec. Dig. (Key No.) § 11; Cent. Dig. §§ 35–39.*

CHAPTER IV

PRESUMPTIONS IN AID OF CONSTRUCTION, AND CONSIDERATION OF EFFECTS AND CONSEQUENCES OF ACT

37–38. When Consideration of Effects and Consequences Permissible.
39. Presumptions in Aid of Interpretation.
40. Presumption Against Exceeding Limitations of Legislative Power.
41. Presumption Against Unconstitutionality.
42. Presumption Against Inconsistency.
43. Presumption Against Impossibility.
44. Presumption Against Injustice.
45. Presumption Against Inconvenience.
46. Presumption Against Absurdity.
47. Presumption Against Ineffectiveness.
48. Presumption as to Public Policy.
49. Presumption Against Irrepealable Laws.
50. Presumption as to Jurisdiction of Courts.

WHEN CONSIDERATION OF EFFECTS AND CONSEQUENCES PERMISSIBLE

37. If the language of a statute is ambiguous, or if it is fairly open to either of two constructions, the court may and should consider the effects and consequences which will follow from construing it in the one way or in the other, and adopt that construction which will best tend to make the statute effectual and produce the most beneficial results.

38. But if the statute plainly expresses the legislative purpose and meaning on its face, it must be enforced exactly as it stands and without any regard whatever to the results which will flow from it.

When a court is confronted with two or more possible interpretations of a statute, or of a clause in it, and each appears to be quite as consistent with the language of the statute as any other, it is necessary to determine which was really intended by the legislature. And here it is

permissible and proper to consider the effects and consequences which, practically and actually, will flow from one of the proposed constructions, and compare them with the results likely to follow from adopting the other construction. If such an inquiry discloses the fact that one of the proposed constructions would tend rather to defeat the purpose of the statute than to sustain it, or would make it difficult or impossible of enforcement, or would disturb vested rights, upset established rules of property, be productive of general public hardship or inconvenience, or lead to consequences so unreasonable or astonishing as to be legally absurd, or would do actual mischief in the state, or controvert the principles which had come to be regarded as the settled public policy of the state, while no such results would follow from the other construction, the legislature must be supposed to have intended that the reasonable, effective, and beneficial interpretation should be applied to its act, and the court should decide accordingly.[1] Further, in a case of this kind, the court may consider the past and present effects of interpreting the statute in a particular way, as well as those which may be anticipated in the future. That is to say, if the statute is, and perhaps for a long time has been, applied in practice according to

[1] Collins v. New Hampshire, 171 U. S. 30, 18 Sup. Ct. 768, 43 L. Ed. 60; In re King's Estate, 105 Iowa, 320, 75 N. W. 187; State v. Canadian Pac. R. Co., 100 Me. 202, 60 Atl. 901; Phillips v. City of Baltimore, 110 Md. 431, 72 Atl. 902, 25 L. R. A. (N. S.) 711; Chouteau v. Missouri Pac. Ry. Co., 122 Mo. 375, 22 S. W. 458; Bowers v. Smith, 111 Mo. 45, 20 S. W. 101, 16 L. R. A. 754, 33 Am. St. Rep. 491; Glaser v. Rothschild, 221 Mo. 180, 120 S. W. 1, 22 L. R. A. (N. S.) 1045; Hicks v. McCown, 144 Mo. App. 544, 129 S. W. 76; Mowry & Payson v. Hanover Fire Ins. Co. (Me.) 76 Atl. 875; In re Halsey Electric Generator Co. (D. C.) 175 Fed. 825; State ex rel. v. Johnson, 138 Mo. App. 306, 121 S. W. 780; Nance v. Southern Ry. Co., 149 N. C. 366, 63 S. E. 116; Turbett Tp. Overseers of Poor v. Port Royal Borough Overseers of Poor, 33 Pa. Super. Ct. 520; State v. Audette, 81 Vt. 400, 70 Atl. 833, 18 L. R. A. (N. S.) 527, 130 Am. St. Rep. 1061. The maxims of interpretation of the Roman law were also in accordance with this principle. See Dig. 50, 17, 114, where we read: "In obscuris inspici solere quod verisimilius est, aut quod plerumque fieri solet." *See "Statutes," Dec. Dig. (Key No.) § 181; Cent. Dig. §§ 259, 263.*

an interpretation put upon it by executive and administrative officers, or by the earlier decisions of the court or of inferior courts, an examination of its actual working and of the effects it has already produced may throw light on the meaning of the legislature in an obscure or doubtful case.[2] But of course the fact that no case has yet arisen in which a proposed construction of the statute would have worked hardship or injustice, or any other of the mischievous consequences above adverted to, is no reason why a court should feel bound to adopt that construction, in the face of another deemed likely to be more reasonable and beneficial. For, in the solution of a problem of this kind, the court must not limit its outlook to the facts of the case at bar, nor merely to past history, but must consider what may be done under the law in the future, as well as what has been done in the past, and how it may in the future affect the community generally, and not only the litigants before it.

But when the language of the statute is plain and free from ambiguity, pointing to only one possible construction consistent with its evident meaning, that construction must be adopted, without any regard to the probable effects and consequences, and even although the court can see that great mischief will ensue.[3] For the courts have nothing to do, constructively, with the policy or the results of a piece of legislation. If the law-making body plainly meant it to bear a certain interpretation, and plainly said so, the courts are absolutely without concern with the consequences. To evade apprehended evils by putting a forced or strained construction on the statute would be to assume legislative

[2] See Hathorn v. Natural Carbonic Gas Co., 194 N. Y. 326, 87 N. E. 504, 23 L. R. A. (N. S.) 436, 128 Am. St. Rep. 555. *See "Statutes," Dec. Dig. (Key No.) §§ 181, 218–220; Cent. Dig. §§ 259, 263, 294–298.*

[3] Martin v. Martin & Bowne Co., 27 App. D. C. 59; Smith v. City of Madison, 7 Ind. 86; Lahart v. Thompson, 140 Iowa, 298, 118 N. W. 398; State v. Franklin County Sav. Bank, 74 Vt. 246, 52 Atl. 1069; Appleton Waterworks Co. v. Appleton, 116 Wis. 363, 93 N. W. 262. *See "Statutes," Dec. Dig. (Key No.) § 181; Cent. Dig. §§ 259, 263.*

functions. In such a case the only rule is "ita lex scripta est," the law must be enforced and obeyed as it stands, no matter what the judges may think of its wholesomeness or propriety, and without inquiring into its reasons or its results. This is the rule both of the civil and the common law.[4]

PRESUMPTIONS IN AID OF INTERPRETATION

39. In construing a doubtful or ambiguous statute, the courts will presume that it was the intention of the legislature to enact a valid, sensible, and just law, and one which should change the prior law no further than may be necessary to effectuate the specific purpose of the act in question. The construction should be in harmony with this assumption whenever possible. But presumptions of this kind cannot prevail against the clear and explicit terms of the law.

It would not be consistent with the respect which one department of the government owes to another, nor with the good of the state, for the courts to impute to the legislature any intention to exceed the rightful limits of their power, to violate the restraints which the Constitution imposes upon them, to disregard the principles of sound public policy, or to make a law leading to absurd, unjust, inconvenient, or impossible results, or calculated to defeat its own object. On the contrary, it is the bounden duty of the judicial tribunals to assume that the law-making power has kept within the proper sphere of its authority, and has acted with integrity, good faith, and wisdom. Consequently, if the words of the law are doubtful or ambiguous, or if the statute is susceptible of more than one construction, the courts will lean in favor of that interpretation which will reconcile the enactment with the limita-

[4] Dig. 40, 9, 12; 3 Bl. Comm. 430.

tions of legislative power and with the dictates of justice and expediency.[5]

Nor will a court inquire into the motives of the legislature, or listen to allegations of fraud or corruption against its members, nor presume that the legislature acted unadvisedly or mistakenly, or that it failed to investigate the subject-matter of the proposed statute and to inform itself and exercise its judgment and discretion, or that it was induced to enact the statute by deception, fraud, or trickery practiced upon it.[6]

At the same time, as we have already remarked, the object of all construction and interpretation is to ascertain the meaning and intention of the legislature. If the meaning is obscure, or the intention doubtful, the courts should seek it out. And in this search they will be aided by the presumptions which we have mentioned. But if the meaning and intention are clear upon the face of the enactment, there is no room for construction. In that event, the literal sense of the statute is to be taken as its intended sense, and the judiciary have nothing to do with considerations of justice, reason, or convenience.[7]

And here it is necessary to call the attention of the reader to an important distinction between the office of the judiciary in determining the constitutional validity of a statute, and their duty in construing a statute ascertained or assumed to be constitutional. In order to adjudge that

[5] Dekelt v. People, 44 Colo. 525, 99 Pac. 330; Lake Shore & M. S. Ry. Co. v. Cincinnati, W. & M. Ry. Co., 116 Ind. 578, 19 N. E. 440; State ex rel. Pearson v. Louisiana & M. R. R. Co., 215 Mo. 479, 114 S. W. 956; Carter v. Whitcomb, 74 N. H. 482, 69 Atl. 779, 17 L. R. A. (N. S.) 733; Hough v. Porter, 51 Or. 318, 98 Pac. 1083. *See "Statutes," Dec. Dig. (Key No.) § 190; Cent. Dig. § 269.*

[6] State v. Harden, 62 W. Va. 313, 58 S. E. 715. And see Black, Const. Law (3d Ed.) pp. 69, 70, and many cases there cited. *See "Constitutional Law," Dec. Dig. (Key No.) § 70; Cent. Dig. § 131; "Statutes," Dec. Dig. (Key No.) §§ 61, 212, 216; Cent. Dig. §§ 56, 196, 289, 292.*

[7] Rossmiller v. State, 114 Wis. 169, 89 N. W. 839, 58 L. R. A. 93, 91 Am. St. Rep. 910; United States v. Kirby, 7 Wall. 482, 19 L. Ed. 278. *See "Statutes," Dec. Dig. (Key No.) §§ 183, 184; Cent. Dig. §§ 261, 262.*

an act of the legislature is in violation of the constitution, it is necessary to be able to show, clearly, how and in what particular it is inconsistent with the organic law; it is not enough to show that it is impolitic, unwise, or even absurd. In passing upon the question of its constitutional validity, the courts have nothing to do with considerations of expediency, wisdom, or justice.[8] But if the law is ascertained to be constitutionally valid (or if the question of its constitutionality is not raised), and the only doubt is as to its proper construction, the courts may listen to arguments drawn from considerations of public policy, or reason, justice, and propriety, and be guided thereby in deciding in favor of one or the other of two permissible interpretations.

PRESUMPTION AGAINST EXCEEDING LIMITATIONS OF LEGISLATIVE POWER

40. It is presumed that the legislature does not design any attempt to transcend the rightful limits of its authority, to violate the principles of international law, or to give exterritorial effect to its statutes. In case of doubt or ambiguity, the construction will be such as to avoid these consequences.

It must be assumed that the legislature has intended to keep within the prescribed limits of its authority, and to enact a valid law. Hence, if a statute is fairly susceptible of two interpretations, one of which would make it transcend the boundaries of legislative competence, and the other would make it valid, the latter interpretation is to be adopted.[9] And a construction involving the exercise of a doubtful power will not readily be adopted in the absence of direct words, when the words used admit of another construction which steers clear of all questions in re-

[8] Black, Const. Law (3d Ed.) 70.

[9] Ferguson v. Borough of Stamford, 60 Conn. 432, 22 Atl. 782. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46; "Statutes," Dec. Dig. (Key No.) § 61; Cent. Dig. §§ 56, 196.*

gard to power.[10] The principle of the separation of the powers of government into three co-ordinate departments requires that each of these should be independent of the others, and that neither should usurp the functions nor encroach upon the lawful powers of the others. Hence any act of legislation which should amount to an unlawful assumption of either executive or judicial powers, or which should arrogate to the legislative department duties or prerogatives which the fundamental law confides to the other branches of the government, would be, for that reason, invalid and of no effect. But an intention thus to exceed the limits of its rightful power is never to be imputed to the legislature. On the contrary, the presumption is that it has kept within those limits. And in case of a doubtful or ambiguous law, the construction should be such as will reconcile the expressed will of the legislature with the limits fixed for the sphere of its action and with the proper jurisdiction of the other departments. Another consequence of the presumption against any abuse of power by the legislature is that any facts, the existence of which is necessary to the validity of an act of the legislature, are to be taken for true, as an inference from the statute itself.[11] And the correctness or incorrectness of a legislative opinion whereon an act is founded, is not a question within the province of the courts to determine; they must assume the fact to be as the legislature states or assumes it.[12]

Violation of International Law

In case of doubt, a statute should be so construed as to harmonize and agree with the rules and principles of international law, and to respect rights and obligations se-

[10] Mardre v. Felton, 61 N. C. 279. *See "Statutes," Dec. Dig. (Key No.) §§ 61, 185; Cent. Dig. §§ 56, 264.*

[11] Erie & N. E. R. Co. v. Casey, 26 Pa. 287; State v. Noyes, 47 Me. 189. *See "Statutes," Dec. Dig. (Key No.) §§ 61, 185; Cent. Dig. §§ 56, 264.*

[12] People v. Lawrence, 36 Barb. (N. Y.) 177; Tyson v. Washington County, 78 Neb. 211, 110 N. W. 634, 12 L. R. A. (N. S.) 350; Kadderly v. City of Portland, 44 Or. 118, 74 Pac. 710. *See "Constitutional Law," Dec. Dig. (Key No.) §§ 50–75; Cent. Dig. §§ 48–138.*

cured by treaties, rather than to violate them.[13] But this presumption is admissible only when there is opportunity to choose between two or more possible interpretations. "If the legislature of England in express terms applies its legislation to matters beyond its legislatorial capacity, an English court must obey the English legislature, however contrary to international comity such legislation may be. But unless there be definite express terms to the contrary, a statute is to be interpreted as applicable and as intended to apply only to matters within the jurisdiction of the legislature by which it is enacted." [14] "If the language of an act of Parliament, unambiguously and without reasonably admitting of any other meaning, applies to foreigners abroad, or is otherwise in conflict with any principle of international law, the courts must obey and administer it as it stands, whatever may be the responsibility incurred by the nation to foreign powers in executing such a law." [15] And these principles are equally applicable in our own country, with this limitation, in respect to the acts of the legislatures of the states, that if they encroach upon the powers confided to Congress in relation to our international concerns, or if they violate the terms of a treaty (which is the "supreme law of the land"), they are unconstitutional and void, and hence no question can arise as to their interpretation.

Exterritorial Operation of Statutes

Prima facie, every statute is confined in its operation to the persons, property, rights, or contracts, which are within the territorial jurisdiction of the legislature which enacted it. The presumption is always against any inten-

[13] Queen v. Anderson, L. R. 1 C. C. R. 161; Bloxam v. Favre, L. R. 8 P. D. 101; Lau Ow Bew v. United States, 144 U. S. 47, 12 Sup. Ct. 517, 36 L. Ed. 340. *See "Treaties," Dec. Dig. (Key No.) § 11; Cent. Dig. § 11.*

[14] Niboyet v. Niboyet, L. R. 4 P. D. 1, 20; Cail v. Papayanni (The Amalia), 1 Moore P. C. (N. S.) 471. *See "International Law," Dec. Dig. (Key No.) § 1; Cent. Dig. § 1.*

[15] Maxwell, Interp. (2d Ed.) 179; The Marianna Flora, 11 Wheat. 40, 6 L. Ed. 405. *See "International Law," Dec. Dig. (Key No.) § 1; Cent. Dig. § 1.*

tion to attempt giving to the act an exterritorial operation and effect.[16] Said Chief Justice Marshall: "It is so unusual for a legislature to employ itself in framing rules which are to operate only on contracts made without their jurisdiction, between persons residing without their jurisdiction, that courts can never be justified in putting such a construction on their words if they admit of any other interpretation which is rational and not too much strained." [17] Thus, although a legislature may provide remedies within the state for the collection of claims or enforcement of personal liabilities arising out of the state, it is not within the competency of the legislative power, upon grounds of public policy, to create personal liabilities and impose them on persons and property out of the jurisdiction of the state and on account of transactions occurring beyond its territorial limits.[18] Again, it is a maxim of general law, recognized by all nations, that the criminal and penal laws of a country do not reach, in their effects, beyond the jurisdiction where they are established.[19] Consequently, it was early decided in this country that the crime of robbery committed by a person who is not a citizen of the United States, on the high seas, on board of a ship belonging exclusively to subjects of a foreign state, is not piracy under the act of Congress defining and punishing that crime, although such an offense might be brought

[16] Noble v. The St. Anthony, 12 Mo. 261; Ex parte Blain, L. R. 12 Ch. Div. 522; Jefferys v. Boosey, 4 H. L. Cas. 815; Hendrickson v. Fries, 45 N. J. Law, 555; State v. Lancashire F. Ins. Co., 66 Ark. 466, 51 S. W. 633, 45 L. R. A. 348; Mutual Life Ins. Co. of New York v. Prewitt, 127 Ky. 399, 105 S. W. 463, 31 Ky. Law Rep. 1319; Woodworth v. Spring, 4 Allen (Mass.) 324; Stanley v. Wabash, St. L. & P. Ry. Co., 100 Mo. 435, 13 S. W. 709, 8 L. R. A. 549; Lanham v. Lanham, 136 Wis. 360, 117 N. W. 787, 17 L. R. A. (N. S.) 804, 128 Am. St. Rep. 1085. *See "Courts," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 18, 19.*

[17] Bond v. Jay, 7 Cranch, 350, 3 L. Ed. 367. *See "Courts," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 18, 19.*

[18] The Ohio v. Stunt, 10 Ohio St. 582. *See "Courts," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 18, 19.*

[19] Commonwealth v. Green, 17 Mass. 515. *See "Statutes," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 18, 19.*

within the broad general terms of the statute.[20] On a similar principle it is held that the civil damage laws—giving a right of action against liquor sellers to innocent parties who sustain injury by the intoxication of persons supplied with liquor by the defendants, or by the consequences of such intoxication or the acts of intoxicated persons, or by the furnishing of liquor to minors or drunkards after warning given not to do so—have no exterritorial operation or effect.[21] And in regard to the statutes, now quite common in the United States, which give a right of action for damages to the surviving family, or the personal representatives, of a person who has been killed by the wrongful act, omission, or default of another, it is generally held that they have no exterritorial force. On the general principle of the limits of political jurisdiction and of the force of municipal law, it is considered that such acts are intended to regulate the conduct of persons and corporations only within the state enacting the law. If a citizen of the state leaves it and goes into another state, he is left to the protection of the laws of the latter state. Hence an action will not lie in the courts of one state, under such a statute enacted by that state, for death caused by a wrongful act or negligence occurring within the limits of another state.[22] It should be observed that this is not a question of legislative power so much as of interpretation. Again, in view of the well-settled general rule that real property is subject exclusively to the laws of the state within whose territorial limits it is situated, any statute dealing in general terms with the real property of a bankrupt would not be construed as applying to or affecting his lands in foreign jurisdictions.[23] Neither can the revenue laws of a state

[20] United States v. Palmer, 3 Wheat. 610, 4 L. Ed. 471; United States v. Howard, 3 Wash. C. C. 340, Fed. Cas. No. 15,404. *See "Piracy," Dec. Dig. (Key No.) §§ 2, 3; Cent. Dig. §§ 2, 3.*

[21] Goodwin v. Young, 34 Hun (N. Y.) 252; Black, Intox. Liq. § 280. *See "Courts," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 18, 19.*

[22] Tiffany, Death by Wr. Act, § 195; Beach v. Bay State Steamboat Co., 30 Barb. (N. Y.) 433; Whitford v. Panama R. Co., 23 N. Y. 465. *See "Death," Dec. Dig. (Key No.) § 35; Cent. Dig. § 50.*

[23] Selkrig v. Davis, 2 Rose, 291. *See "Courts," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 18, 19.*

have any exterritorial operation.[24] And as it is not competent for the legislature of a state to impose taxation on lands situated in another state, the presumption is against any attempt on their part to bring about this result, and tax laws will not be construed as authorizing such taxation, if it is possible to avoid that consequence.[25]

PRESUMPTION AGAINST UNCONSTITUTIONALITY

41. Every act of the legislature is presumed to be valid and constitutional until the contrary is shown. All doubts are resolved in favor of the validity of the act. If it is fairly and reasonably open to more than one construction, that construction will be adopted which will reconcile the statute with the constitution and avoid the consequence of unconstitutionality.

Legislators, as well as judges, are bound to obey and support the constitution, and it is to be understood that they have weighed the constitutional validity of every act they pass. Hence the presumption is always in favor of the constitutionality of a statute; every reasonable doubt must be resolved in favor of the statute, not against it; and the courts will not adjudge it invalid unless its violation of the constitution is, in their judgment, clear, complete, and unmistakable.[26] And, further, a state statute can be de-

[24] State Tax on Foreign-Held Bonds, 15 Wall. 300, 21 L. Ed. 179. *See "Courts," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 18, 19.*

[25] Drayton's Appeal, 61 Pa. 172. *See "Courts," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 18, 19.*

[26] Ex parte Young, 209 U. S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932; Cantwell v. Missouri, 199 U. S. 602, 26 Sup. Ct. 749, 50 L. Ed. 329; Smith v. St. Louis & S. W. Ry. Co., 181 U. S. 248, 21 Sup. Ct. 603, 45 L. Ed. 847; United States ex rel. Bernardin v. Duell, 172 U. S. 576, 19 Sup. Ct. 286, 43 L. Ed. 559; Logan & Bryan v. Postal Telegraph & Cable Co. (C. C.) 157 Fed. 570; Spain v. St. Louis & S. F. R. Co. (C. C.) 151 Fed. 522; Grainger v. Douglas Park Jockey Club, 148 Fed. 513, 78 C. C. A. 199;

clared unconstitutional only where specific restrictions upon the power of the legislature can be pointed out, and the case shown to come within them, and not upon any general theory that the statute is unjust, oppressive, or impolitic, or that it conflicts with a spirit supposed to per-

State ex rel. Woodward v. Skeggs, 154 Ala. 249, 46 South. 268; Mobile Dry-Docks Co. v. City of Mobile, 146 Ala. 198, 40 South. 205, 3 L. R. A. (N. S.) 822; Williams v. State, 85 Ark. 464, 108 S. W. 838, 26 L. R. A. (N. S.) 482, 122 Am. St. Rep. 47; Arkansas, L. & G. R. Co. v. Kennedy, 84 Ark. 364, 105 S. W. 885; Stillwell v. Jackson, 77 Ark. 250, 93 S. W. 71; In re Goodrich's Estate, 6 Cal. App. 730, 93 Pac. 121; Thomas v. Williamson, 51 Fla. 332, 40 South. 831; Wellmaker v. Terrell, 3 Ga. App. 791, 60 S. E. 464; In re Gale, 14 Idaho, 761, 95 Pac. 679; Noble v. Bragaw, 12 Idaho, 265, 85 Pac. 903; People v. McBride, 234 Ill. 146, 84 N. E. 865, 123 Am. St. Rep. 82; People ex rel. v. Rose, 203 Ill. 46, 67 N. E. 746; People ex rel. Henderson v. Onahan, 170 Ill. 449, 48 N. E. 1003; Kraus v. Lehman, 170 Ind. 408, 83 N. E. 714; Smith v. Indianapolis St. R. Co., 158 Ind. 425, 63 N. E. 849; Eckerson v. City of Des Moines, 137 Iowa, 452, 115 N. W. 177; McGuire v. Chicago, B. & Q. R. Co., 131 Iowa, 340, 108 N. W. 902; Chesapeake Stone Co. v. Moreland, 126 Ky. 656, 104 S. W. 762, 31 Ky. Law Rep. 1075, 16 L. R. A. (N. S.) 479; House of Reform v. Lexington, 112 Ky. 171, 65 S. W. 350, 23 Ky. Law Rep. 1470; State ex rel. Labauve v. Michel, 121 La. 374, 46 South. 430; Attorney General v. State Board of Assessors, 143 Mich. 73, 106 N. W. 698; Sears v. Cottrell, 5 Mich. 251; State ex rel. Judah v. Fort, 210 Mo. 512, 109 S. W. 737; Ex parte Loving, 178 Mo. 194, 77 S. W. 508; State v. Thompson, 144 Mo. 314, 46 S. W. 191; Rosenbloom v. State, 64 Neb. 342, 89 N. W. 1053, 57 L. R. A. 922; State v. Standard Oil Co., 61 Neb. 28, 84 N. W. 413, 87 Am. St. Rep. 449; In re Boyce, 27 Nev. 299, 75 Pac. 1, 65 L. R. A. 47; Seeley v. Stevens, 190 N. Y. 158, 82 N. E. 1095; Sugden v. Partridge, 174 N. Y. 87, 66 N. E. 655; Kerrigan v. Force, 68 N. Y. 381; Tonnage Tax Cases, 62 Pa. 286; State v. McCoomer, 79 S. C. 63, 60 S. E. 237; Bon Homme County v. Berndt, 15 S. D. 494, 90 N. W. 147; Fremont, E. & M. V. R. Co. v. Pennington County, 22 S. D. 202, 116 N. W. 75; Edler v. Edwards, 34 Utah, 13, 95 Pac. 367; Young v. Salt Lake City, 24 Utah, 321, 67 Pac. 1066; Young v. Commonwealth, 101 Va. 853, 45 S. E. 327; South Morgantown v. City of Morgantown, 49 W. Va. 729, 40 S. E. 15; State v. Peel Splint Coal Co., 36 W. Va. 802, 15 S. E. 1000, 17 L. R. A. 385; State ex rel. Gubbins v. Anson, 132 Wis. 461, 112 N. W. 475; Hartford Bridge Co. v. Union Ferry Co., 29 Conn. 210; Flint River Steamboat Co. v. Foster, 5 Ga. 194, 48 Am. Dec. 248; Mayor, etc., of Baltimore v. State ex rel. Board of Police of City of Baltimore, 15 Md. 376, 74 Am. Dec. 572; Stewart v. Board of

vade the constitution, but not expressed in words.[27] Neither will any court, in determining the constitutional validity of a statute, take into consideration or pass upon the motives of the legislature in its enactment.[28]

From these well-known principles of constitutional law

Sup'rs of Polk County, 30 Iowa, 9, 1 Am. Rep. 238; Lindsley v. Natural Carbonic Gas Co. (C. C.) 162 Fed. 954; People ex rel. Mattison v. Nye, 9 Cal. App. 148, 98 Pac. 241; Economic Power & Construction Co. v. City of Buffalo, 128 App. Div. 883, 112 N. Y. Supp. 1127; State v. Webber, 214 Mo. 272, 113 S. W. 1054; Hathorn v. Natural Carbonic Gas Co., 60 Misc. Rep. 341, 113 N. Y. Supp. 458; People v. Smith, 108 Mich. 527, 66 N. W. 382, 32 L. R. A. 853, 62 Am. St. Rep. 715; Rathbone v. Wirth, 6 App. Div. 277, 40 N. Y. Supp. 535; Webb v. Ritter, 60 W. Va. 193, 54 S. E. 484; City of Austin v. Cahill, 99 Tex. 172, 88 S. W. 542. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46; "Statutes," Dec. Dig. (Key No.) § 61; Cent. Dig. § 56.*

[27] Jacobson v. Massachusetts, 197 U. S. 11, 25 Sup. Ct. 358, 49 L. Ed. 643; Reeves v. Corning (C. C.) 51 Fed. 774; Forsythe v. City of Hammond (C. C.) 68 Fed. 774; People v. Draper, 15 N. Y. 532; Bertholf v. O'Reilly, 74 N. Y. 509, 30 Am. Rep. 323; State v. Wheeler, 25 Conn. 290; Praigg v. Western Paving & Supply Co., 143 Ind. 358, 42 N. E. 750; People v. Richmond, 16 Colo. 274, 26 Pac. 929; Sawyer v. Dooley, 21 Nev. 390, 32 Pac. 437; Wadsworth v. Union Pac. Ry. Co., 18 Colo. 600, 33 Pac. 515, 23 L. R. A. 812, 36 Am. St. Rep. 309; Black, Const. Law (3d Ed.) 72. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46.*

[28] Fletcher v. Peck, 6 Cranch, 87, 3 L. Ed. 162; Grainger v. Douglas Park Jockey Club, 148 Fed. 513, 78 C. C. A. 199; Hawkins v. Roberts, 122 Ala. 130, 27 South. 327; De Merritt v. Weldon, 154 Cal. 545, 98 Pac. 537; In re Smith, 143 Cal. 368, 77 Pac. 180; Odd Fellows' Cemetery Ass'n v. City and County of San Francisco, 140 Cal. 226, 73 Pac. 987; Ex parte Newman, 9 Cal. 502; State ex rel. Ketcham v. Terre Haute & I. R. Co., 166 Ind. 580, 77 N. E. 1077; State v. Kolsem, 130 Ind. 434, 29 N. E. 595, 14 L. R. A. 566; Parker v. State ex rel. Powell, 132 Ind. 419, 31 N. E. 1114; State ex rel. Belden v. Fagan, 22 La. Ann. 545; People v. Gardner, 143 Mich. 104, 106 N. W. 541; Jewell v. Weed, 18 Minn. 272 (Gil. 247); Fenwick v. Gill, 38 Mo. 510; McCarter v. City of Lexington, 80 Neb. 714, 115 N. W. 303; Moore v. West Jersey Traction Co., 62 N. J. Law, 386, 41 Atl. 946; Kittinger v. Buffalo Traction Co., 160 N. Y. 377, 54 N. E. 1081; State v. Lindsay, 103 Tenn. 625, 53 S. W. 950; Williams v. Nashville, 89 Tenn. 487, 15 S. W. 364; Lynn v. Polk, 8 Lea (Tenn.) 121; State v. Peel Splint Coal Co., 36 W. Va. 802, 15 S. E. 1000, 17 L. R. A. 385. *See "Constitutional Law," Dec. Dig. (Key No.) § 70; Cent. Dig. § 131.*

it follows that the courts will not so construe the law as to make it conflict with the constitution, but will rather put such an interpretation upon it as will avoid conflict with the constitution and give it full force and effect, if this can be done without extravagance. If there is doubt or uncertainty as to the meaning of the legislature, if the words or provisions of the statute are obscure, or if the enactment is fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed.[29] "It is the duty of the court to uphold a statute when the conflict between it and the constitution is not clear; and the implication which must always exist, that no violation has been in-

[29] Grenada County v. Brogden, 112 U. S. 261, 5 Sup. Ct. 125, 28 L. Ed. 704; Parsons v. Bedford, 3 Pet. 433, 7 L. Ed. 732; Road Imp. Dist. No. 1 v. Glover, 86 Ark. 231, 110 S. W. 1031; Chesebrough v. City and County of San Francisco, 153 Cal. 559, 96 Pac. 288; State v. Fountain, 6 Pennewill (Del.) 520, 69 Atl. 926; Park v. Candler, 113 Ga. 647, 39 S. E. 89; Ivey v. State, 112 Ga. 175, 37 S. E. 398; Robson v. Doyle, 191 Ill. 566, 61 N. E. 435; Newland v. Marsh, 19 Ill. 376; McCleary v. Babcock, 169 Ind. 228, 82 N. E. 453; Smith v. Indianapolis St. R. Co., 158 Ind. 425, 63 N. E. 849; Clare v. State, 68 Ind. 17; In re Burnette, 73 Kan. 609, 85 Pac. 575; Standard Oil Co. v. Commonwealth, 119 Ky. 75, 82 S. W. 1020; Rogers v. Jacob, 88 Ky. 502, 11 S. W. 513; Grinage v. Times-Democrat Pub. Co., 107 La. 121, 31 South. 682; Albert v. Gibson, 141 Mich. 698, 105 N. W. 19; Inkster v. Carver, 16 Mich. 484; Kenefick v. City of St. Louis, 127 Mo. 1, 29 S. W. 838; Cass County v. Sarpy County, 66 Neb. 473, 92 N. W. 635; State Water Supply Commission of New York v. Curtis, 192 N. Y. 319, 85 N. E. 148; Roosevelt v. Godard, 52 Barb. (N. Y.) 533; Lowery v. Board of Graded School Trustees in Town of Kernersville, 140 N. C. 33, 52 S. E. 267; Brown v. Galveston, 97 Tex. 1, 75 S. W. 488; Harrison v. Thomas, 103 Va. 333, 49 S. E. 485; State v. Peel Splint Coal Co., 36 W. Va. 802, 15 S. E. 1000, 17 L. R. A. 385; Slack v. Jacob, 8 W. Va. 612; Townsend Gas & Electric Light Co. v. Hill, 24 Wash. 469, 64 Pac. 778; United States v. Delaware & H. Co., 213 U. S. 366, 29 Sup. Ct. 527, 53 L. Ed. 836; Road Commission v. Haring, 55 N. J. Law, 327, 26 Atl. 915; Duncombe v. Prindle, 12 Iowa, 1; Iowa Homestead Co. v. Webster County, 21 Iowa, 221; Winter v. Jones, 10 Ga. 190, 54 Am. Dec. 379; Cotten v. Leon County Com'rs, 6 Fla. 610. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46.*

tended by the legislature, may require the court, in some cases, where the meaning of the constitution is in doubt, to lean in favor of such a construction of the statute as might not at first view seem most obvious and natural. Where the meaning of the constitution is clear, the court, if possible, must give the statute such a construction as will enable it to have effect." [30] "If, upon the construction we have been considering, the law in question would be void, or even of doubtful validity, it is our duty to find, if we are able, some other construction that will relieve it of this difficulty. If a law can be upheld by a reasonable construction, it ought to be done, and it is to be presumed that the legislature, in passing it, intended to enact a reasonable and just law, rather than an unreasonable and unjust one." [31] A few illustrations will suffice to explain the application of these rules. In 1891, the Legislature of California passed an act authorizing the organization and creation of sanitary districts throughout the state, and empowering such districts to issue bonds for the construction of sewers and drains. It was contended that the act might include cities and towns, and that, if this were the case, it would be in violation of a clause of the constitution which prohibited the legislature from interfering with the municipal functions of the different cities and towns of the state. But the court refused to assume that the statute must necessarily include municipal corporations, and therefore held it valid and constitutional.[32] An act of New Jersey provided that whenever a corporation created under it should desire to extend any existing railway or to build a new line, it should, before beginning work, file with the Secretary of State a description and map of the route, and thereupon such corporation should thereby secure the

[30] Slack v. Jacob, 8 W. Va. 612. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46.*

[31] Camp v. Rogers, 44 Conn. 291. And see Huggins v. Ball, 19 Ala. 587. *See "Statutes," Dec. Dig. (Key No.) § 212; Cent. Dig. § 289.*

[32] Woodward v. Fruitvale Sanitary Dist., 99 Cal. 554, 34 Pac. 239. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46; "Statutes," Dec. Dig. (Key No.) § 61; Cent. Dig. § 56.*

"exclusive right to build such extension or new line" for a certain period, provided it first obtained the consent of the body having control of the highways as to the location of such route. There was no purpose apparent on the face of the act to attempt to resume any previously granted franchise, to repeal any charter, or to interfere with chartered rights. And the court held that it could not assume any such intention on the part of the legislature (which would have had the effect of invalidating the act) merely because of an inconsistency between this statute and certain prior laws.[33] So again, where an act setting off a county may be construed to create it in præsenti, in which case the act would be unconstitutional, or may fairly be construed to provide for the future creation of a county, in which case it would be constitutional, it should receive the latter construction.[34]

But it must be observed that the presumption of constitutionality, like all the other presumptions of this class, is available only in case of doubt or ambiguity. The courts cannot revise or correct an act of the legislature in order to make it conform to the constitution. If it is plainly and palpably invalid, it is their duty to so declare it. Where the language is not ambiguous, and the meaning is clear and obvious, an unconstitutional consequence cannot be avoided by forcing upon the language of the act a meaning which, upon a fair test, is repugnant to its terms.[35]

Partial Unconstitutionality

Where part of a statute is unconstitutional, but the remainder is valid, the parts will be separated, if possible, and that which is constitutional will be sustained.[36] It fre-

[33] West Jersey Traction Co. v. Camden Horse R. Co., 52 N. J. Eq. 452, 29 Atl. 333. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46; "Statutes," Dec. Dig. (Key No.) § 61; Cent. Dig. § 56.*

[34] Palms v. Shawano County, 61 Wis. 211, 21 N. W. 77. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46; "Statutes," Dec. Dig. (Key No.) § 61; Cent. Dig. § 56.*

[35] French v. Teschemaker, 24 Cal. 518, 554; Attorney General v. City of Eau Claire, 37 Wis. 400. *See "Constitutional Law," Dec. Dig. (Key No.) § 48; Cent. Dig. § 46.*

[36] Black, Const. Law (3d Ed.) 73.

quently happens that some parts, features, or provisions of a statute are invalid, by reason of repugnancy to the constitution, while the remainder of the act is not open to the same objections. In such cases, it is the duty of the courts not to pronounce the whole statute unconstitutional, if that can be avoided, but, rejecting the invalid portions, to give effect and operation to the valid portions. The rule is, that if the invalid portions can be separated from the rest, and if, after their excision, there remains a complete, intelligible, and valid statute, capable of being executed, and conforming to the general purpose and intent of the legislature, as shown in the act, it will not be adjudged unconstitutional in toto, but sustained to that extent.[37] The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the former may stand although the latter fall.[38] But when the parts of the statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect, the legislature would not pass the residue independently, then, if some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected, must fall with them.[39] To illustrate, the fact that a state stat-

[37] Presser v. Illinois, 116 U. S. 252, 6 Sup. Ct. 580, 29 L. Ed. 615; Mobile & O. R. Co. v. State, 29 Ala. 573; State v. Exnicios, 33 La. Ann. 253; People v. Kenney, 96 N. Y. 294; Attorney General v. Amos, 60 Mich. 372, 27 N. W. 571; People ex rel. Orr v. Whiting, 64 Cal. 67, 28 Pac. 445; In re Assessment and Collection of Taxes, 4 S. D. 6, 54 N. W. 818; In re Groff, 21 Neb. 647, 33 N. W. 426, 59 Am. Rep. 859; Lyman v. Martin, 2 Utah, 136. *See "Statutes," Dec. Dig.* (*Key No.*) § *64; Cent. Dig.* §§ *58–66, 195.*

[38] Commonwealth v. Hitchings, 5 Gray (Mass.) 482; Mayor, etc., of Hagerstown v. Dechert, 32 Md. 369; State v. Clarke, 54 Mo. 17, 14 Am. Rep. 471. *See "Statutes," Dec. Dig.* (*Key No.*) § *64; Cent. Dig.* §§ *58–66, 195.*

[39] Warren v. Mayor and Aldermen of Charlestown, 2 Gray (Mass.) 84; Campau v. City of Detroit, 14 Mich. 276; State ex rel. Walsh v. Dousman, 28 Wis. 541; Slauson v. City of Racine, 13 Wis. 398; Western Union Tel. Co. v. State, 62 Tex. 630; Eckhart v. State, 5

ute, providing for the election of presidential electors, conflicts with the act of Congress in that it fixes a different date for the electors to meet and give their votes, does not vitiate the whole act.[40] Again, an act providing that cities of a certain class may incur bonded indebtedness to an amount not exceeding four per cent. of their assessed valuation, though it conflicts with a clause of the constitution providing that such cities may become indebted only three per cent. of the value of the taxable property therein, is void only to the extent of the repugnancy in fixing the amount at four instead of three per cent.[41] An act providing that every grand jury shall consist of twelve persons is not rendered invalid by the insertion therein of an unconstitutional provision that the assent of eight of that number shall be sufficient for the finding of an indictment.[42] But on the other hand, an act apportioning the state into senate and assembly districts, according to the number of inhabitants, is so closely connected as a whole that if the senate districts are based upon an absolutely unconstitutional enumeration, and to such an extent that it can be judicially seen that great injustice to many of the inhabitants of the state is the necessary result, the assembly districts cannot be separated from the senate districts, but the whole act is void.[43]

W. Va. 515; Willard v. People, 5 Ill. 461; Commonwealth ex rel. Attorney-General v. Potts, 79 Pa. 164; Baker v. Braman, 6 Hill (N. Y.) 47, 40 Am. Dec. 387; State ex rel. Huston v. Perry County Com'rs, 5 Ohio St. 497; Brooks v. Hydorn, 76 Mich. 273, 42 N. W. 1122; Ex parte Jones, 49 Ark. 110, 4 S. W. 639; Wadsworth v. Union Pac. Ry. Co., 18 Colo. 600, 33 Pac. 515, 23 L. R. A. 812, 36 Am. St. Rep. 309. *See "Statutes," Dec. Dig. (Key No.) §§ 63, 64; Cent. Dig. §§ 58–66, 195; "Constitutional Law," Cent. Dig. § 47.*

[40] McPherson v. Blacker, 146 U. S. 1, 13 Sup. Ct. 3, 36 L. Ed. 869. *See "Statutes," Dec. Dig. (Key No.) § 64; Cent. Dig. §§ 58–66, 195.*

[41] Dunn v. City of Great Falls, 13 Mont. 58, 31 Pac. 1017. *See "Statutes," Dec. Dig. (Key No.) § 64; Cent. Dig. §§ 58–66, 195.*

[42] English v. State, 31 Fla. 356, 12 South. 689. *See "Statutes," Dec. Dig. (Key No.) §§ 63, 64; Cent. Dig. §§ 58–66, 195; "Constitutional Law," Cent. Dig. § 47.*

[43] People ex rel. Carter v. Rice, 135 N. Y. 473, 31 N. E. 921, 16 L. R. A. 836. *See "Statutes," Dec. Dig. (Key No.) §§ 63, 64; Cent. Dig. §§ 58–66, 195; "Constitutional Law," Cent. Dig. § 47.*

The constitutions of many of the states provide that the subject of every statute shall be expressed in its title. Where this is the case, if a statute embraces several distinct subjects, some of which are included in the title and others not, it does not necessarily follow that the act is void in toto. If possible, those portions which are unconstitutional, because not expressed in the title, will be separated from the rest, and the valid portions of the act sustained. But in order to justify the courts in thus dealing with a statute, it is necessary that the remaining portions of the act, after the matters not indicated by the title shall have been pruned away, be sufficient in themselves to constitute a complete, intelligible, and sensible law, and one capable of being executed, and that they should be so independent of the rejected portions that it may fairly be presumed that the legislature would have enacted the restricted statute by itself, without making the rejected portions a condition to the passage of the whole act.[44]

PRESUMPTION AGAINST INCONSISTENCY

42. The mind of the legislature is presumed to be consistent; and in case of a doubtful or ambiguous expression of its will, such a construction should be adopted as will make all the provisions of the statute consistent with each other and with the preexisting body of the law.[45]

[44] Black, Const. Law (3d Ed.) 385; People v. Briggs, 50 N. Y. 553; Bradley v. State, 99 Ala. 177, 13 South. 415; Powell v. State, 69 Ala. 10; Lowndes County v. Hunter, 49 Ala. 507; Muldoon v. Levi, 25 Neb. 457, 41 N. W. 280; Trumble v. Trumble, 37 Neb. 340, 55 N. W. 869; Donnersberger v. Prendergast, 128 Ill. 229, 21 N. E. 1. *See "Statutes," Dec. Dig. (Key No.) § 64; Cent. Dig. § 195.*

[45] In re Simmons, 195 N. Y. 573, 88 N. E. 1132; State v. Rutland R. Co., 81 Vt. 508, 71 Atl. 197; State v. Southern Ry. Co., 145 N. C. 495, 59 S. E. 570, 13 L. R. A. (N. S.) 966; State v. Harden, 62 W. Va. 313, 58 S. E. 715; Reed v. Goldneck, 112 Mo. App. 310, 86 S. W. 1104. *See "Statutes," Dec. Dig. (Key No.) §§ 204-211; Cent. Dig. §§ 282-288.*

"An author must be supposed to be consistent with himself; and therefore, if, in one place, he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed. In this respect, the work of the legislature is treated in the same manner as that of any other author." [46] Thus, for example, where one statute made it the duty of a certain officer to prosecute for certain offenses, and provided that for neglect of such duty he might be removed, and another statute provided that he should prosecute such offenders as he might be requested to, and for default he should be removed, it was held that these two laws might be so construed, and should be so construed, as to avoid any inconsistency between them.[47] And where two statutes were passed on the same day, one providing for the more convenient giving of certain affidavits, and to go into effect immediately, and the other apparently dispensing with the most of them, but to go into effect at a future day, it was held that they were not inconsistent, and that full effect might be given to the apparent meaning of the latter, without imputing foolishness to the legislature.[48]

PRESUMPTION AGAINST IMPOSSIBILITY

43. A statute is never to be understood as requiring an impossibility, if such a result can be avoided by any fair and reasonable construction.

It is an ancient and well-known maxim of the law that "lex non cogit ad impossibilia"; [49] or, as it is elsewhere expressed, "lex non intendit aliquid impossible." [50] And

[46] Maxwell, Interp. (2d Ed.) 186.

[47] Shaw v. Mayor, etc., of City of Macon, 21 Ga. 280. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 300–306.*

[48] Fouke v. Fleming, 13 Md. 392. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 300–306.*

[49] Broom, Max. 242.

[50] 12 Coke, 89a "Impossibility" is defined in law as that which,

these maxims are declared to be applicable in the construction of statutes.[51] "The law itself," said an English court, "and the administration of it, must yield to that to which everything must bend—to necessity. The law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling them to impossibilities; and the administration of law must adopt that general exception in the consideration of all particular cases." [52] "The law is not so unreasonable as to require the performance of impossibilities as a condition to the assertion of acknowledged rights; and when legislatures use language so broad as apparently to lead to such results, the courts must say, as they have always said, that the legislature cannot have intended to include those cases in which, by the act of God, a literal

in the constitution and course of nature or of the law, no man can do or perform. See Klauber v. San Diego Street Car Co., 95 Cal. 353, 30 Pac. 555; Reid v. Alaska Packing Co., 43 Or. 429, 73 Pac. 337. An act is said to be "physically" impossible when it is contrary to the course of nature; and such an impossibility may be either absolute, when it is impossible in any and every case, as involving a reversal of the order of nature, or it may be relative, when it arises from the circumstances of the particular case, as, for example, for A. to make a payment to B., the latter being dead. This is sometimes called "impossibility in fact." To this class belongs also what is sometimes called "practical" impossibility, where the act can indeed be done, but only at an excessive or unreasonable expenditure of time, labor, or money. Again, an act is said to be "legally" impossible, when a recognized law or rule of law makes it impossible, as for a minor to make a valid will; and this class of acts must not be confounded with those which are possible, but forbidden by law, as to commit a crime. Lastly, an act is sometimes said to be "logically" impossible when it is contrary to the nature of the transaction or involves a contradiction of terms; for instance, where A. gives property to B. expressly for the latter's own benefit, but on condition that he shall transfer it to C. See Black, Law Dict.; Sweet, Law Dict., voc. "Impossibility." *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[51] Potter v. Douglas County, 87 Mo. 239; Garrison v. Southern Ry. Co., 150 N. C. 575, 64 S. E. 578. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[52] The Generous, 2 Dods. Adm. 322. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

obedience to their mandate has become impossible." [53] Hence if a statute apparently requires the performance of things which cannot be performed, or apparently bases its commands upon the assumption of an impossible state of affairs, the courts must seek for some interpretation of its terms, not too strained or fantastic, which will avoid these results. But yet they are not at liberty to reconstruct the statute, or to import into it, on merely conjectural grounds, a meaning which its terms will not warrant. If the legislature does direct or require an impossibility, in language too plain to be mistaken or to be explained away, the act will simply be rendered inoperative thereby, and it becomes the duty of the courts to pronounce accordingly. For instance, a statute of Texas directed that appeals from interlocutory judgments should be regulated by the law regulating appeals from final judgments, so far as the same might be applicable thereto. But the law governing appeals from final judgments was not at all capable of being applied to appeals from interlocutory determinations. And it was held that the act was inoperative and void.[54]

Yet it must be remembered that statutes normally and ordinarily prescribe rules of action for the future, and the question of the possibility or impossibility of an action enjoined by a statute must be determined by the state of affairs existing when the rights or duties of parties come into controversy, not at the date of the passage of the law. Hence the rule of action which it prescribes must govern whatever comes within the limits of that rule, though it may be an act not thought of or even entirely impossible at the time of the enactment of the statute.[55]

[53] People, to Use of Hall, v. Admire, 39 Ill. 251. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[54] Ward v. Ward, 37 Tex. 389. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[55] Prouty v. Stover, 11 Kan. 235. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

PRESUMPTION AGAINST INJUSTICE

44. It is presumed that the legislature never intends to do injustice. If a statute is doubtful or ambiguous, or fairly open to more than one construction, that construction should be adopted which will avoid this result.

"In construing statutes, it is not reasonable to presume that the legislature intended to violate a settled principle of natural justice or to destroy a vested right to property. Courts, therefore, in construing statutes, will always endeavor to give such an interpretation to the language used as to make it consistent with reason and justice." [56] For example, to quote from a decision in Missouri, "although the constitution may not require notice to be given of the taking of private property for public use, yet when the legislature prescribes a mode by which private property may be taken for such purpose, we will, out of respect to it, suppose that it did not contemplate a violation of that great rule, recognized and enforced in all civil governments, that

[56] Peirce v. City of Bangor, 105 Me. 413, 74 Atl. 1039; Plum v. City of Kansas, 101 Mo. 525, 14 S. W. 657, 10 L. R. A. 371; People ex rel. Burhans v. City of New York, 198 N. Y. 439, 92 N. E. 18; Hasson v. City of Chester (W. Va.) 67 S. E. 731; Varick v. Briggs, 6 Paige (N. Y.) 323; Plumstead Board of Works v. Spackman, L. R. 13 Q. B. Div. 878; Ham v. McClaws, 1 Bay (S. C.) 93; Immigration Soc. of Albermarle County v. Commonwealth, 103 Va. 46, 48 S. E. 509; Miller v. City of Detroit, 156 Mich. 630, 121 N. W. 490, 132 Am. St. Rep. 537; Pattison v. Clingan (Miss.) 47 South. 503; Commonwealth v. Ledman, 127 Ky. 603, 106 S. W. 247, 32 Ky. Law Rep. 452. And see the dictum of Lord Coke: "Legis constructio non facit injuriam;" that is to say, the construction of the law will not be such as to work injury or injustice. Co. Litt. 183. Thus, a construction of a law imposing taxes and authorizing the sale of the land taxed in case of delinquency, which would render uncertain the amount to be paid on redemption from the tax sale, will not be adopted, unless it is perfectly clear that that was the intention of the legislature. Fitzsimmons v. Bonavita (N. J. Ch.) 76 Atl. 313. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 187–203; Cent. Dig. §§ 254, 259, 263, 266–281.*

no one shall be injuriously affected in his rights by a judgment or decree resulting from a proceeding of which he had no notice and against which he could make no defense." [57] Again, if, in a statute, a clause creating a new offense and inflicting a penalty is so defectively drawn that in one part it appears that it shall be executed summarily, and in another, in the usual way, the latter is to be preferred.[58] The same principle governed the decision of a case in Alabama, where the statute to be construed provided that the widow and minor children of any deceased husband or father, who had had set aside to them a homestead of the property of the decedent, should not be held to have forfeited the same to the claims of heirs or creditors by a removal therefrom, so long as such widow and minor children should continue to reside in the state, and that the provisions of the act should apply to homesteads theretofore set apart as fully as to those set apart thereafter. It was held that the statute did not apply where the homestead had been abandoned prior to the act, since by such abandonment the title vested in the heirs subject to the rights of creditors, and the legislature had no power to divest such title.[59] Again, a construction will not be adopted which would disfranchise a considerable number of voters, or deprive a county of representation in the legislature, unless such construction is rendered necessary by the express and unequivocal language of the law.[60] And "on the general principle of avoiding injustice and absurdity, any construction should be rejected, if escape from it were possible, which enabled a person to defeat or impair

[57] City of Boonville v. Ormrod's Adm'r, 26 Mo. 193. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 187–203; Cent. Dig. §§ 254, 259, 263, 266–281.*

[58] Bennett v. Ward, 3 Caines (N. Y.) 259. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 187–203; Cent. Dig. §§ 254, 259, 263, 266–281.*

[59] Banks v. Speers, 97 Ala. 560, 11 South. 841. *See "Statutes." Dec. Dig. (Key No.) §§ 174, 181, 187–203; Cent. Dig. §§ 254, 259, 263, 266–281.*

[60] State ex rel. Norton v. Van Camp, 36 Neb. 9, 91, 54 N. W. 113. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 187–203; Cent. Dig. §§ 254, 259, 263, 266–281.*

the obligation of his contract by his own act, or otherwise to profit by his own wrong." [61] For example, a statute relating to corporations required an annual report to be made by every company organized under its provisions, and provided that, in case of failure to make such report, the trustees should be jointly and severally liable "for all the debts of the company then existing and for all that shall be contracted before such report shall be made." This language was broad enough to include debts due from the corporation to individual trustees. But it was held that "the fundamental rule, which lies at the very foundation of all law, that no person, by his own transgression, can create a cause of action in his own favor against another, must be applied to trustees of these corporations," and that debts of that nature were not within the provisions of the statute.[62]

But it is a recognized maxim of the common law that "ad ea quæ frequentius accidunt jura adaptantur"; that is, the laws are understood to be adapted to (or made with reference to) those cases which most frequently occur.[63] Hence the injustice and hardship which are to be avoided by construction, and which the legislature is presumed not to have intended, are not merely such as may occur in individual and exceptional cases only, but such as would fall upon the public generally or be of frequent occurrence; for, as it has been well said, "individual hardship not infre-

[61] Maxwell, Interp. (2d Ed.) 249.

[62] Briggs v. Easterly, 62 Barb. (N. Y.) 51. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 187–203; Cent. Dig. §§ 254, 259, 263, 266–281; "Action," Dec. Dig. (Key No.) §§ 1, 2; Cent. Dig. §§ 1–16.*

[63] 2 Co. Inst. 137; Broom, Maxims, 43. Similar rules or maxims were recognized in the Roman law. Thus, "Quod semel aut bis existit prætereunt legislatores;" that is, legislators pass over what happens only once or twice. Dig. 1, 3, 6; Broom, Maxims, 46. Again, "Jus constitui oportet in his quæ ut plurimum accidunt non quæ ex inopinato;" that is, laws ought to be made with a view to those cases which happen most frequently, and not to those which are of rare or accidental occurrence. Dig. 1, 3, 3. But see Federal St. & P. V. Passenger Ry. Co. v. Pittsburg, 226 Pa. 419, 75 Atl. 662, where it is held that the argument from inconvenience cannot prevail, in the construction of a statute, when the legal rights of parties are involved. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 187–211, 214; Cent. Dig. §§ 254, 259, 263, 266–281.*

quently results from enactments of general advantage." [64] And again, a statute which, construed according to the plain meaning of its words, is, in all cases of ordinary occurrence, in no degree inconsistent or unreasonable, should not be varied by construction in every case merely because there is one possible but highly improbable case in which the law would operate with great severity and against our notions of justice. The utmost that can be contended is that the construction of the statute should be varied in that particular case, so as to avoid the injustice.[65]

Moreover, it is only when the construction is doubtful that the argument from injustice or failure of justice is of force. The presumption that the legislature intends to deal justly is, in a sense, rebuttable; and it is of no value whatever when the language of the act is clear and explicit. In that case, it is the duty of the court to take the statute as it finds it, and if injustice results, it is the legislature which must give a remedy, not the judicial tribunals.[66] Of course, if the injustice took the form of a violation of any rights secured by constitutional guaranties, the question of the validity of the statute would arise; but that is not a question of interpretation.

[64] Maxwell, Interp. (2d Ed.) 247.

[65] Miller v. Salomons, 7 Exch. 475, 549; Salomons v. Miller, 8 Exch. 778. This litigation concerned the oath required to be taken by members of Parliament at that date (1852), which concluded with the words "upon the true faith of a Christian," and the "possible but highly improbable case" referred to by the court was that of a Jew being elected to Parliament. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 187–203; Cent. Dig. §§ 254, 259, 263, 266–281.*

[66] Pitman v. Flint, 10 Pick. (Mass.) 504; Goble v. Simeral, 67 Neb. 276, 93 N. W. 235. Such was also the rule of the Roman law. See the remark: "Hoc quidem perquam durum est, sed ita lex scripta est;" this is exceedingly hard, but so the law is written—an observation quoted by Blackstone as used by Ulpian in the civil law, and applied to cases where courts of equity have no power to abate the rigor of the law; that is, in cases where the written law is explicit and positive. Dig. 40, 9, 12, 1; 3 Bl. Comm. 430. And see Ladew v. Tennessee Copper Co. (C. C.) 179 Fed. 245, holding that no considerations of apparent hardship can justify a forced or strained construction of the law as written. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 175, 181; Cent. Dig. §§ 254, 259, 263.*

PRESUMPTION AGAINST INCONVENIENCE

45. It is presumed that the legislature never intends its enactments to work public inconvenience or private hardship; and if a statute is doubtful or ambiguous, or fairly open to more than one construction, that construction should be adopted which will avoid such results.

It is always to be presumed that the legislature intends the most reasonable and beneficial construction of its enactments, when their design is obscure or not explicitly expressed, and such as will avoid inconvenience, hardship, or public injuries.[67] Hence if a law is couched in doubtful or ambiguous phrases, or if its terms are such as to be fairly susceptible of two or more constructions, the courts, having this presumption in mind, will attach weight to arguments drawn from the inconvenient results which would follow from putting one of such constructions upon the statute, and will therefore adopt the other.[68] "While it is quite true

[67] Richards v. Dagget, 4 Mass. 534; Inhabitants of Somerset v Inhabitants of Dighton, 12 Mass. 383; Gibson v. Jenney, 15 Mass 205. Within the meaning of the rule that statutes should be so construed as to avoid "inconvenience," this term means, as applied to the public, the sacrifice or jeopardizing of important public interests or hampering the legitimate activities of the government or the transaction of public business, and, as applied to individuals, it means serious hardship or injustice. Betts v. United States, 132 Fed. 237, 65 C. C. A. 452. Thus it is not to be presumed that the legislature intended that such a construction should be put upon the charter of a city as would create serious and useless embarrassment in the orderly administration of the city's affairs. Kelly v. City of Waterbury, 83 Conn. 270, 76 Atl. 467. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[68] Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. 747, 44 L. Ed. 969; United States v. Fisher, 2 Cranch, 358, 2 L. Ed. 304; In re Mitchell, 120 Cal. 384, 52 Pac. 799; Village of Iuka v. Schlosser, 97 Ill. App. 222; Ayers v. Knox, 7 Mass. 306; Thaxter v. Jones, 4 Mass. 570; Langdon v. Potter, 3 Mass. 215; Gore v. Brazier, 3 Mass. 523, 3 Am. Dec. 182; Rogers v. Goodwin, 2 Mass. 475; Phillips v. Baltimore, 110 Md. 431, 72 Atl. 902. 25 L. R. A. (N. S.) 711; State v. Rat Portage Lumber Co., 106 Minn. 1, 115 N. W. 162;

that where the language of a statute is plain and admits of but one construction, the courts have no power to supply any real or supposed defects in such statute, in order to avoid inconvenience or injustice, inasmuch as that is exclusively within the domain of the legislative department, yet, where the terms of the statute are not plain, but admit of more than one construction, one of which leads to great inconvenience and injustice, and possibly to the defeat or obstruction of the legislative intent, then the court may, with a view to avoid such results, adopt some other construction more in accordance with the legislative intent." [69] "If words are ambiguous, and one construction leads to enormous inconvenience, and another construction does not, the one which leads to the least inconvenience is to be preferred." [70] Thus, if it is apparent that, by a particular construction of a statute in a doubtful case, great public interests would be endangered or sacrificed, it ought not to be presumed that such construction was intended by the legislature.[71] This would be the case, for instance, where one proposed interpretation would prevent the state from exercising the power of eminent domain over lands pending the administration of the estate of their deceased owner.[72]

But if there is no doubt, obscurity, or ambiguity on the face of the law, but its meaning is plain and explicit, the argument from inconvenience has no place.[73] "It may be

Lamar Water & Electric Light Co. v. City of Lamar, 140 Mo. 145, 39 S. W. 768; Associates of Jersey Co. v. Davison, 29 N. J. Law, 415; Smith v. People, 47 N. Y. 330; King v. Beeston, 3 Durn. & E. 592. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[69] Carolina Sav. Bank v. Evans, 28 S. C. 521, 6 S. E. 321. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[70] Reid v. Reid, L. R. 31 Ch. Div. 402. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[71] People ex rel. Hamilton v. Board of Com'rs of Illinois & M. Canal, 4 Ill. 153. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[72] Kane v. Kansas City, Ft. S. & M. Ry. Co., 112 Mo. 34, 20 S. W. 532. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[73] In re Alma Spinning Co., L. R. 16 Ch. Div. 681; Queen v.

proper, in giving a construction to a statute, to look to the effects and consequences when its provisions are ambiguous, or the legislative intent is doubtful. But when the law is clear and explicit, and its provisions are susceptible of but one interpretation, its consequences, if evil, can be avoided only by a change of the law itself, to be effected by legislative and not judicial action." [74] To give a single illustration of this branch of the rule—where a statute gives to a husband the power, by his last will, to extinguish the common-law rights of his widow, unless she thinks proper to renounce the will, and if she desires to defeat the testator's provisions it is required of her to do so by an express dissent, and where the language of the act is not ambiguous, and is sufficiently comprehensive to include every widow, whether sane or insane, and the act makes no exception in favor of the latter, the courts cannot make any such exception, from considerations of the hardship and inconvenience which may result.[75]

Further, a proposed construction of a statute cannot be supported by the argument from inconvenience, where the particular hardship or difficulty alleged has been foreseen and provided against by the legislature in other parts or clauses of the same statute.[76]

Overseers of Tonbridge Parish, L. R. 13 Q. B. Div. 339; United States v. Fisher, 2 Cranch, 358, 2 L. Ed. 304. And see Buggeln v. Cameron, 11 Ariz. 200, 90 Pac. 324; Grieb v. Zemansky, 157 Cal. 316, 107 Pac. 605. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[74] Bosley v. Mattingly, 14 B. Mon. (Ky.) 89. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[75] Collins v. Carman, 5 Md. 503. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

[76] Steppacher v. McClure, 75 Mo. App. 135. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181; Cent. Dig. §§ 254, 259, 263.*

PRESUMPTION AGAINST ABSURDITY

46. It is presumed that the legislature does not intend an absurdity, or that absurd consequences shall flow from its enactments. Such a result will therefore be avoided, if the terms of the act admit of it, by a reasonable construction of the statute.[77]

The word "absurdity" has not quite the same meaning in law as in logic or mathematics. In the exact sciences it designates a proposition which is contrary to an axiom or

[77] Oates v. First Nat. Bank, 100 U. S. 239, 25 L. Ed. 580; Interstate Drainage & Investment Co. v. Board of Com'rs of Freeborn County, Minn., 158 Fed. 270, 85 C. C. A. 532; Fields v. United States, 27 App. D. C. 433; Curry v. Lehman, 55 Fla. 847, 47 South. 18; Mayor of City of Jeffersonville v. Weems, 5 Ind. 547; Advisory Board of Coal Creek Tp., Montgomery County, v. Levandowski (Ind. App.) 84 N. E. 346; Bird v. Board of Com'rs of Kenton County, 95 Ky. 195, 24 S. W. 118; Foley v. Bourg, 10 La. Ann. 129; Commonwealth v. Kimball, 24 Pick. (Mass.) 366; In re Lambrecht, 137 Mich. 450, 100 N. W. 606; Bowers v. Smith, 111 Mo. 45, 20 S. W. 101, 16 L. R. A. 754, 33 Am. St. Rep. 491; Logan County v. Carnahan, 66 Neb. 685, 95 N. W. 812; In re Opinion of Justices (N. H.) 72 Atl. 754; State v. People's Nat. Bank, 75 N. H. 27, 70 Atl. 542; State v. Clark, 29 N. J. Law, 96; People ex rel. Burhans v. City of New York, 198 N. Y. 439, 92 N. E. 18; East v. Brooklyn Heights R. Co., 195 N. Y. 409, 88 N. E. 751, 23 L. R. A. (N. S.) 513; Nance v. Southern Ry. Co., 149 N. C. 366, 63 S. E. 116; Stackhouse v. Board of Com'rs of Dillon County, 86 S. C. 419, 68 S. E. 561; People ex rel. v. De Guelle, 47 Colo. 13, 105 Pac. 1110; State v. Williams, 173 Ind. 414, 90 N. E. 754; Gist v. Rackliffe-Gibson Const. Co., 224 Mo. 369, 123 S. W. 921; Scott v. Royston, 223 Mo. 568, 123 S. W. 454; Fruin v. Meredith, 145 Mo. App. 586, 122 S. W. 1107; State ex rel. Ousley v. Turner, 141 Mo. App. 323, 125 S. W. 531; Hicks v. Krigbaum (Ariz.) 108 Pac. 482; Ex parte Prosole (Nev.) 108 Pac. 630; Texas & P. Ry. Co. v. Taylor (Tex. Civ. App.) 118 S. W. 1097; In re Howard's Estate, 80 Vt. 489, 68 Atl. 513; Henry v. Tilson, 17 Vt. 479; Gilkey v. Cook, 60 Wis. 133, 18 N. W. 639; Hicks v. Krigbaum (Ariz.) 108 Pac. 482. The same rule prevailed also in the Roman law, where it was a maxim that "verba nihil operari melius est quam absurde;" that is, it is better that words should have no operation at all than that they should operate absurdly. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 188; Cent. Dig. §§ 254, 259, 263, 266.*

self-evident truth. But, as applied to a statute, it means not only that which is physically impossible, but also that which is morally so; and that is to be regarded as morally impossible which is contrary to reason and common sense, or, in other words, which could not be attributed to a man in his right senses and gifted with ordinary judgment.[78] Hence, by an "absurdity," as the term is used in the rule above stated, we mean anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion. The presumption against absurd consequences of legislation is therefore no more than the presumption that the legislators are gifted with ordinary good sense. It is applicable, like all the other presumptions which we are considering, only where there is room for construction by reason of the obscurity or ambiguity of the law. For example, where the act relates to the boundary between counties, and its terms, if taken literally, would have the effect of attaching to one county a tract of land which is entirely separated from that county by an intervening space of several miles, it cannot be supposed that this was intended by the legislature, and a more reasonable construction will be put upon the act if its terms will warrant it.[79] Again, a statute of Massachusetts forbade any person to disinter a human body, "not being authorized by the selectmen of any town in this commonwealth." In a prosecution under this act, it was held sufficient for the indictment to aver that the defendant was not authorized by the selectmen of the town where the body had been buried. The statute was thus construed to avoid an absurd and inconvenient result. For, said the court, as oral testimony can alone be admitted on criminal trials, where the facts are provable by witnesses, the consequence of a different con-

[78] State v. Hayes, 81 Mo. 574. This also accords with the maxim of Lord Coke: "Lex semper intendit quod convenit rationi." Co. Litt. 78b. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 188; Cent. Dig. §§ 254, 259, 263, 266.*

[79] Perry County v. Jefferson County, 94 Ill. 214. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 188; Cent. Dig. §§ 254, 259, 263, 266.*

struction would be "that the officers of every town, to the number of 300 or 400, must be summoned and give their personal attendance in the court where the prosecution is pending. We hazard nothing in saying that the legislature never intended such an absurdity." [80] So again, a requirement in an act relating to a turnpike road that the "width" of the macadam shall not be less than 8 inches, nor more than 15 inches, will be construed as a requirement that the "depth" of the macadam shall be as specified, as a literal interpretation would lead to an absurdity.[81]

But it must be observed that if the legislature will enact an absurdity in clear and specific terms, the courts are not at liberty to divert the statute from its intended object by any process of construction. If the absurdity is an impossibility, the act will be inoperative; otherwise, it must be executed exactly as it stands. It has been said by Jervis, C. J.: "If the precise words used are plain and unambiguous, in our judgment we are bound to construe them in their ordinary sense, even though it should lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied when their import is doubtful or obscure; but we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning." [82]

[80] Commonwealth v. Loring, 8 Pick. 370. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 188; Cent. Dig. §§ 254, 259, 263, 266.*

[81] Bird v. Board of Com'rs of Kenton County, 95 Ky. 195, 24 S. W. 118. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 188; Cent. Dig. §§ 254, 259, 263, 266.*

[82] Abley v. Dale, 20 L. J. C. P. (N. S.) 233. And see Woodward v. Watts, 2 El. & Bl. 452. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 188, 189; Cent. Dig. §§ 254, 259, 263, 266, 268.*

PRESUMPTION AGAINST INEFFECTIVENESS

47. It is presumed that the legislature intends to impart to its enactments such a meaning as will render them operative and effective, and to prevent persons from eluding or defeating them. Accordingly, in case of any doubt or obscurity, the construction will be such as to carry out these objects.

In construing a statute, of whatever class it may be, an interpretation must never be adopted which will render the act ineffectual or defeat its purpose, if it will admit of any other reasonable construction; but, on the contrary, the legislative intention to make an efficient and enforceable law must be presumed, and the construction must be such as to give it force and effect and accomplish the purposes for which it was designed.[83] Thus, for instance, if a proposed construction of a statute would involve interference by state law with proceedings in the federal courts, it will be rejected, if another and sensible interpretation can be found; for it must be presumed that the legislature knew it had no power to authorize such interference and that it could not have intended to enact a law which would be illegal and ineffectual.[84]

[83] The Emily and The Caroline, 9 Wheat. 381, 6 L. Ed. 116; Kaiser Land & Fruit Co. v. Curry, 155 Cal. 638, 103 Pac. 341; Simmons v. California Powder Works, 7 Colo. 285, 3 Pac. 420; United States v. Day, 27 App. D. C. 458; Commonwealth v. International Harvester Co., 131 Ky. 551, 115 S. W. 703, 133 Am. St. Rep. 256; State ex rel. Norvell-Shapleigh Hardware Co. v. Cook, 178 Mo. 189, 77 S. W. 559; State ex rel. Kaufman v. Martin, 31 Nev. 493, 103 Pac. 840; Hettel v. First Judicial District Court, 30 Nev. 382, 96 Pac. 1062, 133 Am. St. Rep. 730; State v. Duis, 17 N. D. 319, 116 N. W. 751; Dugger v. Mechanics' & Traders' Ins. Co., 95 Tenn. 245, 32 S. W. 5, 28 L. R. A. 796; State v. Pollman, 51 Wash. 110, 98 Pac. 88. It was an ancient maxim of the common law that "Interpretatio fienda est ut res magis valeat quam pereat." Black, Law Dict. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[84] Reynolds v. Enterprise Transp. Co., 198 Mass. 590, 85 N. E. 110. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

On the same principle, the construction should not be such as will enable persons to elude the provisions of the law, or escape its consequences, or defeat the objects for which it was ordained, if this can be avoided.[85] For example, where a literal construction of certain words in an act imposing a tax on dividends of a corporation would place it in the power of the directors of the corporation to declare dividends in such a manner as to escape all taxation, such construction will not be adopted, if the act is reasonably susceptible of another construction whereby a revenue is secured.[86]

But yet, if the act is expressed in plain terms without ambiguity, the construction indicated by the face of it is not to be rejected merely because it may render it possible for persons to practice frauds upon the act; such consequences are never to be presumed; and no presumption against the existence or grant of a power can be drawn from the fact that it may possibly be abused.[87] As remarked by the court in New York, in a case where this principle was involved: "It is said that this renders the statute inoperative, and that this result must be avoided. This is a plausible but not a valid or sound position. There is nothing in the constitution, or in any legal principle, to prevent the legislature from passing an act with provisions which render it inoperative. When different constructions may be put upon an act, one of which will accomplish the purpose of the legislature, and the other render the act nugatory, the former should be adopted; but when the provisions of the act are such that to make it operative would violate the declared meaning of the legislature, courts should be astute in construing it inoperative." [88] To the same effect is a saying of Lord Tenterden, in a case often

[85] Thompson v. State, 20 Ala. 54. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[86] City of Philadelphia v. Ridge Ave. Pass. Ry. Co., 102 Pa. 190. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[87] Opinion of Justices, 22 Pick. (Mass.) 571. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[88] Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

referred to in this connection. "Our decision," said this learned judge, "may in this particular case operate to defeat the object of the act, but it is better to abide by this consequence than to put upon it a construction not warranted by the words of the act, in order to give effect to what we may suppose to have been the intention of the legislature." [89]

PRESUMPTION AS TO PUBLIC POLICY

48. It is presumed that the legislature intends its enactments to accord with the principles of sound public policy and the interests of public morality, not to violate them; and due weight should be given to this presumption in the construction of a doubtful or ambiguous statute.

It must always be supposed that the legislative body designs to favor and foster, rather than to contravene, that public policy which is based upon the principles of natural justice, good morals, and the settled wisdom of the law as applied to the ordinary affairs of life. Consequently, if the statute is so worded as to admit of more than one interpretation, that construction should be put upon it which will carry out this presumed intent.[90] For example, a statute

[89] King v. Barham, 8 Barn. & C. 99. *See "Statutes," Dec. Dig. (Key No.) § 184; Cent. Dig. § 262.*

[90] Aicardi v. State, 19 Wall. 635, 22 L. Ed. 215. Where either of two constructions may with propriety be adopted, it is the duty of the court to adopt that one best calculated to protect the public against fraud and imposition, though it may work hardship in individual instances. Stern v. Fargo (N. D.) 122 N. W. 403, 26 L. R. A. (N. S.) 665. So, also, in general, the courts must assume that legislation was not intended to beget anomalies, and they must exhaust the limits of legitimate construction before affixing to it any such consequences. People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153. But the fact that a certain construction of a statute is a departure from the former policy of the state does not affect the duty of the court to construe it in that manner when the intention of the legislature is clearly apparent. Skelton v. State, 173 Ind. 462, 90 N. E. 897. *See "Stat-*

should not be so construed, if it can reasonably be avoided, as to authorize or permit a man to be a judge in his own cause, or to determine his right to an office of profit or trust.[91] As it has been said by the Supreme Court of Massachusetts, the language of a statute is to be taken in its natural import, "unless the intention resulting from the ordinary import of the words be repugnant to sound, acknowledged principles of national policy.[92] And if that intention be repugnant to such principles of national policy, then the import of the words ought to be enlarged or restrained so that it may comport with those principles, unless the intention of the legislature be clearly and manifestly repugnant to them. For although it is not to be presumed that the legislature will violate principles of public policy, yet an intention of the legislature repugnant to those principles, clearly, manifestly, and constitutionally expressed, must have the force of law." [93] In an important case before the Supreme Court of the United States, that tribunal declared that it was historically true that the American people are a religious people, as shown by the religious objects expressed by the original grants and charters of the colonies, and the recognition of religion in the most solemn acts of their history, as well as in the constitutions of the states and of the nation; and therefore the courts, in construing statutes, should not impute to any

utes," Dec. Dig. (Key No.) §§ 174, 181, 184, 188; Cent. Dig. §§ 254, 259, 262, 263, 266.

[91] Commonwealth v. McCloskey, 2 Rawle (Pa.) 369; Day v. Savadge, Hob. 85; Queen v. Owens, 2 El. & El. 86. But although it is contrary to the general rules of law to make a person a judge in his own cause, it has been intimated that the legislature, in a proper case, might depart from this rule, and in that event it would be the duty of the courts to sustain the enactment. But an intention of the legislature to bring about such a result should not be inferred except from very clear and explicit provisions. Mersey Docks Trustees v. Gibbs, L. R. 1 H. L. 93, 110. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 184, 188; Cent. Dig. §§ 254, 259, 262, 263, 266.*

[92] The context shows that the "public policy" of the state is here meant, and not that of the nation in the wider sense.

[93] Opinion of Justices, 7 Mass. 523. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 184, 188; Cent. Dig. §§ 254, 259, 262, 263, 266.*

legislature a purpose of action against or in derogation of religion.[94]

But it should be remembered that considerations of public policy are not to be taken into account in determining the validity of a statute, but only in its construction. If it does not violate any provision of the constitution, it cannot be declared void merely because it contravenes some rule or principle of public policy. But if the statute is ascertained or admitted to be constitutionally valid, then the question of interpretation may arise, and in the solution of this question it is permissible to consider its effect with reference to the settled principles of public policy.[95]

PRESUMPTION AGAINST IRREPEALABLE LAWS

49. It is always to be presumed, in case of doubt or ambiguity, that the legislature does not intend to derogate from the authority of its successors, to make irrepealable laws, or to divest the state of any portion of its sovereign powers.

"Acts of Parliament derogatory from the power of subsequent Parliaments bind not." [96] This maxim is not capable in all cases of being applied to the acts of Congress or of the state legislatures; but there is, in this country, a presumption that no legislative body intends to fetter the hands of its successors by the enactment of laws which cannot be repealed or modified by them. In a case in Wisconsin, it appeared that a charter of a city declared that none of its provisions should be considered as repealed by

[94] Church of Holy Trinity v. United States, 143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 184, 188; Cent. Dig. §§ 254, 259, 262, 263, 266.*

[95] Baxter v. Tripp, 12 R. I. 310. And see State ex rel. Wolfe v. Parmenter, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707, holding that the courts have nothing to do with the policy of a statute, except in so far as it may explain the intention of the legislature. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 181, 184, 188; Cent. Dig. §§ 254, 259, 262, 263, 266.*

[96] 1 Bl. Comm. 90.

any general law contravening them, unless the purpose to repeal them should be expressly set forth in such law. It was held, nevertheless, that the charter might be repealed by implication by a general law; for, it was said, one legislature cannot, by such a provision, bind a future legislature to a particular mode of repeal.[97]

This rule finds its most important application in those cases where it is claimed that a statute or charter involves the surrender, to an individual or corporation, of some portion of the sovereign power of the state, in such a manner as to be irrevocable by any future legislature; as, for instance, where it is alleged that there has been a grant of exemption from taxation, made in such a shape as to constitute a contract, and therefore to be beyond the reach of subsequent legislation, or a grant, similarly made, of a monopoly or exclusive franchise. In these cases the legal doctrine is clear and well settled. It will never be presumed that the legislature intends to make such an irrevocable contract. On the contrary, the presumption is always against such an intention. All doubts will be resolved in favor of the state. No such irrepealable grant can be sustained except upon the clearest and plainest terms, unequivocally manifesting the legislative intention claimed.[98]

[97] Kellogg v. City of Oshkosh, 14 Wis. 623. *See "Statutes," Dec. Dig. (Key No.) § 149; Cent. Dig. § 218.*

[98] Gilman v. Sheboygan, 2 Black, 510, 17 L. Ed. 305; Providence Bank v. Billings, 4 Pet. 514, 7 L. Ed. 939; Delaware Railroad Tax, 18 Wall. 206, 21 L. Ed. 888; Pennsylvania R. Co. v. Canal Com'rs, 21 Pa. 9; Detroit v. Detroit & H. P. R. Co., 43 Mich. 140, 5 N. W. 275; Probasco v. Town of Moundsville, 11 W. Va. 501; Bennett v. McWhorter, 2 W. Va. 441; Mayor, etc., of City of Mobile v. Stein, 54 Ala. 23; Brummitt v. Ogden Waterworks Co., 33 Utah, 289, 93 Pac. 828; Capitol City Light & Fuel Co. v. City of Tallahassee, 42 Fla. 462, 28 South. 810; Charles River Bridge v. Warren Bridge, 11 Pet. 420, 9 L. Ed. 773; Boston Beer Co. v. Massachusetts, 97 U. S. 25, 24 L. Ed. 989; Shreveport Traction Co. v. City of Shreveport, 122 La. 1, 47 South. 40, 129 Am. St. Rep. 345; City of St. Louis v. United Rys. Co., 210 U. S. 266, 28 Sup. Ct. 630, 52 L. Ed. 1054; Village of Hyde Park v. Oakwoods Cemetery Ass'n, 119 Ill. 141, 7 N. E. 627; Commonwealth v. Broad St. Rapid Transit St. R. Co., 219 Pa. 11, 67 Atl. 958; Hollister v. State, 9 Idaho, 8, 71 Pac. 541. *See "Statutes," Dec. Dig. (Key No.) § 149; Cent. Dig. § 218.*

PRESUMPTION AS TO JURISDICTION OF COURTS

50. A statute will not be construed as ousting or restricting the jurisdiction of the superior courts, or as vesting a new jurisdiction in them, unless there be express words or a necessary implication to that effect.

Statutes which merely give affirmatively jurisdiction to one court do not oust that previously existing in another court; and the jurisdiction of courts of equity, or of the higher courts proceeding according to the course of the common law, is never taken away except by plain words or by an equally plain intendment.[99] "It is, perhaps, on the general presumption against an intention to disturb the established state of the law, or to interfere with the vested rights of the subject, that the strong leaning now rests against construing a statute as ousting or restricting the jurisdiction of the superior courts; although it may owe its origin to the pecuniary interests of the judges in former times, when their emoluments depended mainly on fees. It is supposed that the legislature would not make so important an innovation without a very explicit expression of its intention." [100] Hence a statute which merely enlarges the powers of courts of law in respect to usury does not take away the jurisdiction of the chancery courts.[101] And a statute which authorizes an action at law on a lost note does not deprive the court of equity of its jurisdiction in such cases.[102] But while this rule is well established, yet

[99] Barnawell v. Threadgill, 40 N. C. 86; Cates v. Knight, 3 Durn. & E. 442; Earl of Shaftesbury v. Russell, 1 Barn. & C. 666; Overseers of Poor v. Smith, 2 Serg. & R. (Pa.) 363; Lyman v. Gramercy Club, 28 App. Div. 30, 50 N. Y. Supp. 1004; Kansas City, to Use of Drake, v. Summerwell, 58 Mo. App. 246. *See "Statutes," Dec. Dig. (Key No.) § 212; Cent. Dig. § 289.*

[100] Maxwell, Interp. (2d Ed.) 152.

[101] McKoin v. Cooley, 3 Humph. (Tenn.) 559. *See "Usury," Dec. Dig. (Key No.) § 92; Cent. Dig. § 191.*

[102] Crawford v. Childress' Ex'rs, 1 Ala. 482; Tindall v. Childress, 2 Stew. & P. (Ala.) 250. *See "Lost Instruments," Dec. Dig. (Key No.) § 14; Cent. Dig. §§ 28, 29.*

it is equally true that when the object and intent of the statute manifestly require it, words that appear to be permissive only may be construed as obligatory, and will then have the effect of ousting the courts of their jurisdiction.[103] As a general rule, statutes which confer jurisdiction in certain cases upon inferior tribunals are not understood as affecting the power of control and supervision which the superior courts may exercise over the proceedings of such tribunals. This matter is more fully explained by Lord Mansfield in an opinion from which we quote as follows: "If a new offense is created by statute, and a special jurisdiction out of the course of the common law is prescribed, it must be followed. If not strictly pursued, all is a nullity and coram non judice. In such case, there is no occasion to oust the common-law courts, because, not being an offense at common law, but punishable only sub modo, in the particular manner prescribed, they never could have jurisdiction. But where a new offense is created and directed to be tried in an inferior court established according to the course of the common law, such inferior court tries the offense as a common-law court, subject to be removed by writs of error, habeas corpus, certiorari, and to all the consequences of common-law proceedings. In that case, this court [the King's Bench] cannot be ousted of its jurisdiction without express negative words." [104]

And "as it is presumed the legislature would not effect a measure of so much importance as the ouster or restriction of the jurisdiction of the superior courts without an explicit expression of its intention, so it is equally improbable that it would create a new, especially a new and exclusive, jurisdiction with less explicitness, and therefore a construction which would impliedly have this effect is to be avoided." [105] Thus, where one statute expressly excludes certain cases from the jurisdiction of a particular court, a

[103] Crisp v. Bunbury, 8 Bing. 394. *See "Statutes," Dec. Dig. (Key No.) § 212.*

[104] Hartley v. Hooker, 2 Cowp. 523. *See "Statutes," Dec. Dig. (Key No.) § 212.*

[105] Endlich, Interp. § 155.

subsequent statute which indicates that the court is then supposed to have jurisdiction of them is insufficient to confer it.[106] But "although an unfounded assumption by the legislature that a particular jurisdiction existed might not alone be sufficient to create it, yet when the jurisdiction is assumed to exist, and explicit provision is made as to the form and mode of its exercise, the authority to proceed in that form and mode carries with it, by necessary implication, jurisdiction of the proceedings." [107]

[106] Ludington v. United States, 15 Ct. Cl. 453. And see In re Contested Election of McNeill, 111 Pa. 235, 2 Atl. 341. *See "Statutes," Dec. Dig. (Key No.) § 212.*

[107] State v. Miller, 23 Wis. 634; Cullen v. Trimbie, L. R. 7 Q. B. 416. *See "Statutes," Dec. Dig. (Key No.) § 212.*

CHAPTER V

LITERAL AND GRAMMATICAL CONSTRUCTION, MEANING OF LANGUAGE, AND INTERPRETATION OF WORDS AND PHRASES

51–52. Primary Rule as to Meaning of Language of Statute.
53–54. Use of Same Language and Change of Language.
55. Grammatical Interpretation.
56. Inapt and Inaccurate Language.
57. Statute Devoid of Meaning.
58. Correction of Clerical Errors and Misprints.
59. Effect of Misdescriptions and Misnomers.
60. Rejection of Surplusage.
61. Interpolation of Words.
62. Construing Terms with Reference to Subject.
63. Technical and Popular Meaning of Words.
64. Technical Legal Terms.
65. Words Judicially Defined.
66. Commercial and Trade Terms.
67. Associated Words.
68–70. General and Special Terms.
71. General Terms Following Special Terms.
72. Express Mention and Implied Exclusion.
73. Relative and Qualifying Terms.
74. Reddendo Singula Singulis.
75. Conjunctive and Disjunctive Particles.
76. Number and Gender of Words.
77–81. Computation of Time.

PRIMARY RULE AS TO MEANING OF LANGUAGE OF STATUTE

51. If the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and, where there is no ambiguity in the words, there is no room for construction.

52. Words used in a statute are to be read in the natural and ordinary sense given to them customarily by those who use the language with propriety; the approved popular meaning being given to words of

common speech and the approved special meaning to technical terms or words of art, unless there is reason to believe, from the face of the statute, that the words were intended to bear some other meaning.

In determining the legislative intent and purpose of an enactment, its language is first of all to be considered, in its natural and ordinary signification, and if there is no obscurity or ambiguity on the face of it, there is neither occasion nor justification for any process of construction, but the statute must be applied and enforced exactly as it stands.[1] In such a case the court is not at liberty to distort the words of the law from their apparent meaning, nor to substitute one word for another, and thereby change or reverse the express language of the act.[2] But if the reading of the language of the act according to its prima facie import leads to a manifest contradiction of the apparent purpose of the statute, or if it is evident, from a view of the whole statute, or of other laws on the same subject, that the meaning which the legislature had in mind and meant to express is different from the literal import of the language used, it is the intention, and not the words, which

[1] Chudnovski v. Eckles, 232 Ill. 312, 83 N. E. 846; First Nat. Bank of Peoria v. Farmers' & Merchants' Nat. Bank of Wabash, 171 Ind. 323, 86 N. E. 417; Id. (Ind. App.) 82 N. E. 1013; Barron v. Kaufman, 131 Ky. 642, 115 S. W. 787; Leoni Tp. v. Taylor, 20 Mich. 148; Ex parte Brown, 21 S. D. 515, 114 N. W. 303; Gross v. Colonial Assur. Co. (Tex. Civ. App.) 121 S. W. 517; Waldron v. Taylor, 52 W. Va. 284, 45 S. E. 336. The natural and obvious meaning of the language of a law must be preferred, save in rare cases, to a signification evolved only by diligent search. United States v. Colorado & N. W. R. Co., 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (N. S.) 167. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 190; Cent. Dig. §§ 266, 267, 269, 276.*

[2] State v. Scott, 36 W. Va. 704, 15 S. E. 405. Ordinarily the words of a statute should not be so loosely construed as to divert the law from its prescribed statutory channel, nor construed so strictly as to take the life out of the law. Murphy v. Wabash R. Co., 228 Mo. 56, 128 S. W. 481. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 190; Cent. Dig. §§ 266, 267, 269, 276.*

must govern.[3] Also, if the words used are of doubtful or ambiguous meaning, their signification may be enlarged or restricted as may be necessary to make them conform to the intention of the legislature, when that intention is clearly and certainly ascertained by the process of construction.[4]

It is also a part of this rule that the words and phrases employed in a statute are to be read in their natural and ordinary sense, according to good and approved usage, unless it is apparent, on the face of the enactment, that they were meant to bear some other signification.[5] As to technical

[3] Curry v. Lehman, 55 Fla. 847, 47 South. 18; Glaser v. Rothschild, 221 Mo. 180, 120 S. W. 1, 22 L. R. A. (N. S.) 1045; James v. United States Fidelity & Guaranty Co., 133 Ky. 299, 117 S. W. 406; Emerson v. Boston & M. R. R., 75 N. H. 427, 75 Atl. 529, 27 L. R. A. (N. S.) 331. It is the duty of a court to restrain the operation of a statute within narrower limits than its words import, if it is satisfied that their literal meaning would extend to cases which the legislature never designed to include. Coal & Coke Ry. Co. v. Conley (W. Va.) 67 S. E. 613. *See "Statutes," Dec. Dig. (Key No.) §§ 181–188, 190; Cent. Dig. §§ 259–267, 269, 276.*

[4] State ex rel. Aull v. Field, 112 Mo. 554, 20 S. W. 672; Glaser v. Rothschild, 221 Mo. 180, 120 S. W. 1, 22 L. R. A. (N. S.) 1045; Northern Indiana Ry. Co. v. Lincoln Nat. Bank (Ind. App.) 92 N. E. 384. *See "Statutes," Dec. Dig. (Key No.) §§ 181–188, 190; Cent. Dig. §§ 259–267, 269, 276.*

[5] Wadsworth v. Boysen, 148 Fed. 771, 78 C. C. A. 437; Schaeffer v. Burnett, 120 Ill. App. 70; Huber v. Robinson, 23 Ind. 137; McFarland v. Missouri, K. & T. Ry. Co., 94 Mo. App. 336, 68 S. W. 105; People ex rel. McNeile v. Glynn, 128 App. Div. 257, 112 N. Y. Supp. 695; Town of Ft. Edward v. Hudson Valley Ry. Co., 127 App. Div. 438, 111 N. Y. Supp. 753; Law v. Smith, 34 Utah, 394, 98 Pac. 300; Norfolk & Portsmouth Traction Co. v. Ellington's Adm'r, 108 Va. 245, 61 S. E. 779; Daniel v. Simms, 49 W. Va. 554, 39 S. E. 690; Osterholm v. Boston & Montana Consol. Copper & Silver Min. Co., 40 Mont. 508, 107 Pac. 499; State v. Cronin, 41 Mont. 293, 109 Pac. 144; Joplin Supply Co. v. West (Mo. App.) 130 S. W. 156; Doyle v. City of Troy, 138 App. Div. 650, 122 N. Y. Supp. 704; People ex rel. Lichtenstein v. Langan, 196 N. Y. 260, 89 N. E. 921, 25 L. R. A. (N. S.) 479; State ex rel. Applegate v. Taylor, 224 Mo. 393, 123 S. W. 892. See, also, the maxim, "est ipsorum legislatorum tanquam viva vox," the voice of the legislators themselves is like the living voice; that is, the language of a statute is to be understood and interpreted like ordinary spoken language.

terms and the words and phrases peculiar to some particular science or art, they are to be understood in their technical sense; that is, according to the meaning given to them by persons conversant with the particular science or art, and who use its terminology with exactness and propriety.[6] But words of common speech are to be understood in their correct popular sense. On the one hand, it must be assumed that the legislature expresses itself in a manner appropriate to the dignity and solemnity of a statute; and hence its words must be taken in the sense accorded to them by those who use the English language with correctness and perspicuity, not in any secondary, colloquial, or slang sense, though the particular expression may be so used in the speech of the vulgar. On the other hand, the courts are not at liberty to apply subtle and forced interpretations to the words of a law, and read them in a recondite or unfamiliar sense, unless compelled by the obscurity of the act, but must take them in their primary and natural sense, and assume that, if some other meaning had been intended, some other appropriate expressions would have been employed.[7] But where words having more than one meaning in common usage are employed in a statute, they should be given that meaning which will best serve the purposes of the statute, if it is not repugnant to the context.[8]

10 Coke, 101b. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 189; Cent. Dig. §§ 266–268, 276.*

[6] See infra, p. 175.

[7] Town of Southington v. Southington Water Co., 80 Conn. 646, 69 Atl. 1023; Rothschild v. New York Life Ins. Co., 97 Ill. App. 547. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 189; Cent. Dig. §§ 266–268, 276.*

[8] People v. Ballhorn, 100 Ill. App. 571; City of Chicago v. Green, 238 Ill. 258, 87 N. E. 417. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 189, 208; Cent. Dig. §§ 266–268, 276, 285.*

USE OF SAME LANGUAGE AND CHANGE OF LANGUAGE

53. Where the same language is used repeatedly in a statute in the same connection, it is presumed to bear the same meaning throughout the act; but this presumption will be disregarded where it is necessary to assign different meanings to the same terms in order to make the statute sensible, consistent, and operative.

54. Conversely, where different language is used in the same connection, in different parts of the statute, it is presumed that the legislature intended it to have a different meaning and effect.

Where the same word or phrase is used more than once in the same act in relation to the same subject-matter, and looking to the same general purpose, if in one connection its meaning is clear, and in another it is otherwise doubtful or obscure, it is, in the latter case, to receive the same construction as in the former, unless there is something in the connection in which it is employed plainly calling for a different construction.[9] But the presumption that the same meaning is intended for the same expression in every part of the act is not controlling; and where it appears that, by giving it effect, an unreasonable result will follow, and the manifest object of the statute be defeated, the courts will disregard the presumption, and will attach a meaning which will make the act

[9] Rhodes v. Weldy, 46 Ohio St. 234, 20 N. E. 461, 15 Am. St. Rep. 584; Raymond v. Cleveland, 42 Ohio St. 529; James v. DuBois, 16 N. J. Law, 293; Pitte v. Shipley, 46 Cal. 161; In re County Seat of Linn County, 15 Kan. 500; Queen v. Poor Law Comm'rs, 6 Ad. & El. 56; In re National Savings Bank Ass'n, L. R. 1 Ch. App. 547; Courtauld v. Legh, 4 Exch. 126; Gunning v. People, 86 Ill. App. 174; Darby v. McCarrol, 5 Hayw. (Tenn.) 286; Postal Tel. Cable Co. v. Farmville & P. R. Co., 96 Va. 661, 32 S. E. 468; Gernert v. Limbach, 163 Ala. 413, 50 South. 903; Ryan v. State (Ind.) 92 N. E. 340. *See "Statutes," Dec. Dig. (Key No.) § 209; Cent. Dig. § 286.*

consistent with itself, and carry out the true purpose and intent of the legislature.[10] Hence, when the general meaning and intention of the act are perfectly plain, it may be necessary to assign different meanings to the same word as used in different sections of the statute, or even in different sentences in the same section. Thus, in an English case, the act repeatedly used the word "rent"; but in order to carry out its meaning and purpose, and make it sensible and intelligible, it was considered necessary to take the word as meaning sometimes "rent charge" and sometimes "rent reserved."[11] Again, an act of Parliament provided that "whosoever, being married, shall marry any other person during the life of the former husband or wife, shall be guilty of felony." A case arose in which the second marriage, aside from its bigamous character, would have been void by reason of a legal disability of the parties. It was argued that, in construing this statute, the same effect must be given to the word "marry" in both parts of the sentence, and that, consequently, as the first marriage must necessarily be a perfect and binding one, the second must be of equal efficacy in order to constitute bigamy, or, at least, that the words "shall marry" must be read as meaning "shall marry under such circumstances as that the second marriage would be good but for the existence of the first." But the court refused to accept this reasoning. Looking at the general purpose and meaning of the statute, and the evil which it was intended to prevent or punish, it was adjudged that the word "marry" could not have been intended to be used in the same sense in both parts of the sentence, but that "shall marry" should be taken to mean "shall go through the form and ceremony of marriage with another person," and consequently that a second marriage, the first remaining undissolved, would come within the statute, even though it might otherwise have been void or voidable for

[10] Henry v. Trustees of Perry Tp., 48 Ohio St. 671, 30 N. E. 1122; State v. Knowles, 90 Md. 646, 45 Atl. 877, 49 L. R. A. 695. *See "Statutes," Dec. Dig. (Key No.) § 209; Cent. Dig. § 286.*

[11] Angell v. Angell, 9 Q. B. 328. *See "Statutes," Dec. Dig. (Key No.) § 209; Cent. Dig. § 286.*

diriment impediments or lack of compliance with formal requisites.[12]

The general rule (with its exception) as above stated, is confined to the case of the same language being used in different places in the same statute. "The intention of one legislative body in the use and application of a term, in an act passed by it, is not conclusive as to the intention of another and different legislative body in the use of the term in the passage of another and different act. True, it is proper to look at such a circumstance, in arriving at a correct interpretation of the subsequent law, but still that interpretation must be such as is demanded by the terms of the act itself, if they are clear and unambiguous."[13] And there is no rule of construction requiring the same meaning to be given to the same word used in different connections in different statutes.[14]

If, in a subsequent statute on the same subject as a former one, the legislature uses different language in the same connection, the courts must presume that a change of the law was intended.[15] If a provision in one statute, which has received a judicial construction, is inserted in another, the same construction will be given to it; but if the clause varies, it shows a different intention in the legislature.[16]

[12] Queen v. Allen, L. R. 1 C. C. R. 367. *See "Statutes," Dec. Dig. (Key No.) § 209; Cent. Dig. § 286.*

[13] Feagin v. Comptroller, 42 Ala. 516. *See "Statutes," Dec. Dig. (Key No.) § 209; Cent. Dig. § 286.*

[14] Rupp v. Swineford, 40 Wis. 28. *See "Statutes," Dec. Dig. (Key No.) § 209; Cent. Dig. § 286.*

[15] Lehman, Durr & Co. v. Robinson, 59 Ala. 219; Rich v. Keyser, 54 Pa. 86; Hasely v. Ensley, 40 Ind. App. 598, 82 N. E. 809. *See "Statutes," Dec. Dig. (Key No.) §§ 205, 225; Cent. Dig. §§ 282, 302, 303.*

[16] Inhabitants of Rutland v. Inhabitants of Mendon, 1 Pick. (Mass.) 154. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig. § 306.*

GRAMMATICAL INTERPRETATION

55. Primarily, a statute is to be interpreted according to the ordinary meaning of its words and the proper grammatical effect of their arrangement in the act. But if there is any ambiguity, or if there is room for more than one interpretation, the rules of grammar will be disregarded where a too strict adherence to them would raise a repugnance or absurdity or would defeat the purpose of the legislature.[17]

It is to be presumed, in the first instance, that the legislature understood the rules of grammar and the use of language, and that they have expressed their will in apt and well-chosen terms. But this presumption will be abandoned whenever it becomes apparent that the result of adhering to it would be to make the act absurd, extravagant, or repugnant to other provisions of law. No such intention can be charged to the legislature, if it can be escaped by construction. Hence, in such cases, grammatical rules and the propriety of language must yield to the intention of the law-making body, to be ascertained by a rational interpretation of the enactment. "It is a rule in the construction of statutes that, in the first instance, the grammatical sense of the words is to be adhered to. If that is contrary to or inconsistent with any expressed intention, or any declared

[17] Ohio Nat. Bank v. Berlin, 26 App. D. C. 218; George v. Board of Education, 33 Ga. 344; Boyer v. Onion, 108 Ill. App. 612; State v. Myers, 146 Ind. 36, 44 N. E. 801; United States v. Cohn, 2 Ind. T. 474, 52 S. W. 38; State v. Brandt, 41 Iowa, 593; State v. Scaffer, 95 Minn. 311, 104 N. W. 139; State ex rel. Pearson v. Louisiana & M. R. R. Co., 215 Mo. 479, 114 S. W. 956; State, to Use of Rosenblatt, v. Heman, 70 Mo. 441; Jay v. School Dist. No. 1 of Cascade County, 24 Mont. 219, 61 Pac. 250; Fremont, E. & M. V. Ry. Co. v. Pennington County, 20 S. D. 270, 105 N. W. 929; Waters-Pierce Oil Co. v. State, 48 Tex. Civ. App. 162, 106 S. W. 918; Garby v. Harris, 7 Exch. 591; Metropolitan Board of Works v. Steed, L. R. 8 Q. B. Div. 445; Blais v. Franklin (R. I.) 77 Atl. 172. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

purpose of the statute, or if it would involve any absurdity, repugnance, or inconsistency in its different provisions, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such inconvenience, but no further." [18] "The grammatical construction of a statute is one mode of interpretation. But it is not the only mode, and it is not always the true mode. We may assume that the draftsman of an act understood the rules of grammar, but it is not always safe to do so." [19] It was an old and well-recognized rule of the common law, applicable to all written instruments, that "verba intentioni, non e contra, debent inservire;" that is to say, words ought to be made subservient to the intent, not the intent to the words.[20] Hence, in the construction of statutes, when the intention of the legislature can be gathered from the statute, words may be modified, altered, or supplied to give to the enactment the force and effect which the legislature intended.[21] As an example of departing from the strict grammatical sense, we may cite cases in which the future tense has been read as including the present and the past, where that was necessary to carry out the meaning of the legislature. Thus, an enabling act relating to married women who "shall come into the state" may apply to one who came into the state

[18] Warburton v. Loveland, 1 Huds. & B. 623, 648. Considerations of grammatical and rhetorical usage are not always controlling in construing a statute, where an intent in conflict therewith is disclosed, but are not unimportant and may influence a doubtful case, and where there is nothing out of accord therewith, either in the particular language or the general intent, they are of controlling force. First Nat. Bank of Peoria v. Farmers' & Merchants' Nat. Bank of Wabash, 171 Ind. 323, 86 N. E. 417; Id. (Ind. App.) 82 N. E. 1013. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[19] Fisher v. Connard, 100 Pa. 63, 69. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[20] Fox's Case, 8 Coke, 93b. See, also, Singer Mfg. Co. v. McCollock (C. C.) 24 Fed. 667. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[21] Quin v. O'Keeffe, 10 Ir. C. L. (N. S.) 393; Lyde v. Barnard, 1 Mees. & W. 101; Territory ex rel. Sampson v. Clark, 2 Okl. 82, 35 Pac. 882. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

before the passage of the law.[22] So, where an act provided that certain land "shall be allotted for, and given to," an individual named, it was held that the words were words of absolute donation and passed an immediate interest.[23] In another case, the phrase "current expenses of the year" was made to read "expenses of the current year," it being evident that the latter form of words more correctly expressed the legislative intent.[24]

But it is very necessary to remember that all construction and interpretation has for its sole object to ascertain the meaning and intention of the legislature; that it is never allowable thus to defeat that meaning and intention; and that the meaning of the legislature is primarily to be sought in the words of the law. Hence, the rule which we are now considering is to be taken in connection with that fundamental rule stated in the beginning of this chapter, that if the words of the enactment are free from all doubt and ambiguity, and express a single, definite, and sensible meaning, that meaning is conclusively presumed to be the one which the legislature intended to convey.

Following out the radical idea that the intention of the law-makers is the thing to be sought for and applied, we easily deduce a corollary to the rule immediately under consideration, which may be thus stated: Neither bad grammar nor bad English will vitiate a statute, if the meaning of the legislature can be clearly discovered. Awkward, slovenly, or ungrammatical phrases and sentences may yet convey a definite meaning; and if they do, the courts must accept it as the meaning of the law-makers.[25]

[22] Maysville & L. R. Co. v. Herrick, 13 Bush (Ky.) 122. And see Malloy v. Chicago & N. W. Ry. Co., 109 Wis. 29, 85 N. W. 130. See *"Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[23] Rutherford v. Greene, 2 Wheat. 196, 4 L. Ed. 218. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[24] Babcock v. Goodrich, 47 Cal. 488. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[25] Kelly's Heirs v. McGuire, 15 Ark. 555; Murray v. State, 21 Tex. App. 620, 2 S. W. 757, 57 Am. Rep. 623; State v. Harden, 62 W. Va. 313, 58 S. E. 715. Ambiguity in a statute consists in susceptibility of two or more meanings and uncertainty as to which was intended, and mere informality in phraseology, or clumsiness of

For example, an act provided that townships might issue bonds when "the consent of a majority of the taxpayers appearing upon the last assessment roll as shall represent a majority of the landed property of the township" should be obtained. Hereupon the court observed: "The only difficulty that is or can be suggested is from the awkward and ungrammatical construction of the sentence in using the word 'as' without any proper antecedent. The draftsman was evidently a bad grammarian, or lacked clearness of conception sufficient to enable him to carry out the idea with which he began a sentence until he got to the end of it. In the next preceding sentence, the phrase 'such sum of money' is used without anything to which 'such' refers; but the sentence is intelligible and explicit, and its meaning cannot be changed by interlarding at conjecture some words to amend the grammar or construction." [26]

INAPT AND INACCURATE LANGUAGE

56. The use of inapt, inaccurate, or improper terms or phrases in a statute will not defeat the act, provided the real meaning of the legislature can be gathered from the context or from the general purpose and tenor of the enactment. In such cases, the words in question will be interpreted according to that meaning which the legislature actually intended to express, although this may involve a departure from their literal signification.

Where the intent of the legislature, and the object and purpose of a law, are plainly apparent, and such manifest

expression, does not make the statute ambiguous, if the language imports one intent with reasonable certainty. State v. Harden, supra. But an unscientific and bungling statute cannot be construed by the same strict scientific rules as would be applied to one scientifically drawn and consistently expressed. Town of Pelham v. Shinn, 194 N. Y. 548, 87 N. E. 1128; Reynolds v. Bingham, 193 N. Y. 601, 86 N. E. 1131. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

[26] Lane v. Schomp, 20 N. J. Eq. 82. *See "Statutes," Dec. Dig. (Key No.) § 189; Cent. Dig. § 268.*

intent and purpose are not inconsistent with, or outside the terms of, the law, it is not allowable to permit the intent and purpose to be defeated merely because not defined and declared in the most complete and accurate language.[27] "It is generally true that where words used in a statute are clear and unambiguous there is no room left for construction; but when it is plainly perceivable that a particular intention, though not precisely expressed, must have been in the mind of the legislator, that intention will be enforced and carried out, and made to control the strict letter." [28] For example, a statute provided that "no execution shall issue against the body of the defendant * * * unless he shall have been held to bail upon a writ of capias ad satisfaciendum." Now there is no such thing known in the

[27] State ex rel. Van Nice v. Whealey, 5 S. D. 427, 59 N. W. 211; Crocker v. Crane, 21 Wend. (N. Y.) 211, 34 Am. Dec. 228; McLorinan v. Bridgewater Tp., 49 N. J. Law, 614, 10 Atl. 187; St. Louis, I. M. & S. Ry. Co. v. State, 86 Ark. 518, 112 S. W. 150; McKee Land & Improvement Co. v. Williams, 63 App. Div. 553, 71 N. Y. Supp. 1141, affirmed 173 N. Y. 630, 66 N. E. 1112; Commonwealth v. Grinstead, 108 Ky. 59, 55 S. W. 720; Fortune v. Board of Com'rs of Buncombe County, 140 N. C. 322, 52 S. E. 950; Pullen v. Corporation Commission, 152 N. C. 548, 68 S. E. 155. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[28] State ex rel. Missouri Mut. Life Ins. Co. v. King, 44 Mo. 283. "It has indeed been asserted that no modification of the language of a statute is ever allowable in construction, except to avoid an absurdity which appears to be so, not to the mind of the expositor merely, but to that of the legislature; that is, when it takes the form of a repugnancy. In such cases, the legislature shows in one passage that it did not mean what its words signify in another; and a modification is therefore called for and sanctioned beforehand, as it were, by the author. But the authorities do not appear to support this restricted view. They would seem rather to establish that the judicial interpreter may deal with careless and inaccurate words and phrases in the same spirit as a critic deals with an obscure or corrupt text, when satisfied, on solid grounds, from the context or history of the enactment, or from the injustice, inconvenience, or absurdity of the consequences to which it would lead, that the language thus treated does not really express the intention, and that his amendment probably does." Maxwell, Interp. (2d Ed.) 305. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

law as a defendant being held to bail under a capias of this character. But on the other hand, if a capias ad respondendum had been specified, the statute would have been intelligible and consistent. The court therefore held that it was evidently a legislative mistake, consisting in the use of an improper term; that the real intention of the legislature would be carried into effect by the substitution of the proper term; and consequently that the statute should be read as thus amended.[29] In another case, the statute spoke of "preferred stockholders" in a corporation, and of the payment to them of "dividends." To take these words literally would have led to absurd consequences, as shown by the context and the whole purpose of the act, and would have made the statute unconstitutional. The court therefore held that "preferred stockholders" must be read "mortgage creditors," and "dividends" must be read "interest." It was said: "A mortgage creditor, although denominated a 'preferred stockholder,' is a mortgage creditor nevertheless, and interest is not changed into a dividend by calling it a 'dividend.' Nothing is more common in the construction of statutes and contracts than for the court to correct such self-evident misnomers by supplying the proper words." [30] Again, an act was entitled "An act to authorize the Governor to appoint a district attorney for the Third district." But the body of the statute provided that the Governor should "appoint some person learned in the law as Attorney General for the Third judicial district." As a literal construction would render the act nugatory, it was held that it should be read as if "district attorney" were substituted for "Attorney General." [31] In an English case, where the word "rent" occurred many times in a statute, without further specification, the court read it as sometimes meaning "rent charge" and sometimes "rent reserved," ac-

[29] People v. Hoffman, 97 Ill. 234. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[30] Burt v. Rattle, 31 Ohio St. 116. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[31] Territory v. Ashenfelter, 4 N. M. (Johns.) 85, 12 Pac. 879. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

cording to the intent of the legislature as shown by the context, and the propriety of language.[82]

On the same principle, the word "paragraph" in a statute may be construed to mean "section," when such a reading makes it accord with the intention of the legislature.[83] And a statute creating a local court, which inappropriately describes the municipality in which it is to have jurisdiction as a "city," when it is in fact a "town" at the date of the passage of the law, will be corrected accordingly.[84]

STATUTE DEVOID OF MEANING

57. If a statute is devoid of meaning—if the language employed, though clear and precise, directs an impossibility or is incapable of bearing any reasonable signification, or if an ambiguity exists which cannot be cleared up—so that it is not possible to ascertain the object to which the legislature intended the act to apply or the result which it was expected to accomplish, the act is inoperative. In such a case, the courts cannot revise and amend it, on mere conjecture as to the intention of the legislature, but it is their duty to pronounce it incapable of effectual operation.

"A statute must be capable of construction and interpretation, otherwise it will be inoperative and void. The court must use every authorized means to ascertain and give it an intelligible meaning; but if, after such effort, it is found to be impossible to solve the doubt and dispel the obscurity, if no judicial certainty can be settled upon as to the meaning, the court is not at liberty to supply or make one. The court may not allow conjectural interpretation to usurp

[82] Angell v. Angell, 9 Ad. & El. (N. S.) 328. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[83] Alfrey v. Colbert, 168 Fed. 231, 93 C. C. A. 517. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

[84] White v. State, 121 Ga. 592, 49 S. E. 715. *See "Statutes," Dec. Dig. (Key No.) §§ 187–203; Cent. Dig. §§ 266–281.*

the place of judicial exposition. There must be a competent and efficient expression of the legislative will." [35] "Whether a statute be a public or private one, if the terms in which it is couched be so vague as to convey no definite meaning to those whose duty it is to execute it, either ministerially or judicially, it is necessarily inoperative. The law must remain as it was, unless that which professes to change it be itself intelligible." [36] "We are bound," says Lord Denman, "to give to the words of the legislature all possible meaning which is consistent with the clear language used. But if we find language used which is incapable of a meaning, we cannot supply one. To give an effectual meaning [in the present case] we must alter, not only 'or' into 'and,' but 'issued' into 'levied.' It is extremely probable that this would express what the legislature meant. But we cannot supply it. Those who used the words thought that they had effected the purpose intended. But we, looking at the words as judges, are no more justified in introducing that meaning than we should be if we added any other provision." [37] To illustrate further, in a case in Texas, it appeared that a statute authorized appeals from interlocutory judgments thereafter rendered in the district courts, and required that such appeals "be regulated by the law regulating appeals from final judgments in the district courts, so far as the same may be applicable thereto." The statutes regulating appeals from final judgments were entirely inapplicable to appeals from interlocutory judgments, and for this reason it was held that the act was nugatory and void.[38] Again, a statute prohibited the sale of liquor "within three miles of Mt. Zion Church in

[35] State v. Partlow, 91 N. C. 550, 49 Am. Rep. 652; State v. Boon, 1 N. C. 191; Commonwealth v. Bank of Pennsylvania, 3 Watts & S. (Pa.) 173. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

[36] Drake v. Drake, 15 N. C. 110. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

[37] Green v. Wood, 7 Ad. & El. (N. S.) 178. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

[38] Ward v. Ward, 37 Tex. 389. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

Gaston county." There were two churches of that name in that county, several miles apart. It was held that no effect or operation could be given to the statute.[39] And so, where a statute divided a county into two judicial districts, and provided for the holding of terms of court therein, but enacted that the same court should be held by the same judge in the two different districts on the same day, it was held that the law remained the same as before this enactment, for it was incapable of operation.[40]

But no court would be justified in holding a statute void for want of meaning without an earnest effort to discover a construction which will bring out the intention of the legislature and give it effect. Neither bad grammar nor awkward, untechnical, or slovenly expressions will vitiate a statute, nor clerical errors or misnomers, nor inadvertent omissions or surplusage, nor the use of inapt, inaccurate, or indefinite language, provided that the real meaning and intention of the legislature can be made out and a valid and sensible enactment framed by any method of interpretation.[41] Hence a statute cannot be declared void for uncertainty, if it will admit of any reasonable construction that will support it.[42] Even if the statute, in respect to one of the subjects with which it deals, is so indefinite or contradictory that it cannot be enforced, yet it will be held valid as to any other subject on which there is a clear and unambiguous expression.[43]

[39] State v. Partlow, 91 N. C. 550, 49 Am. Rep. 652. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

[40] Ex parte Jones, 49 Ark. 110, 4 S. W. 639. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

[41] Fortune v. Board of Com'rs of Buncombe County, 140 N. C. 322, 52 S. E. 950; State v. Livingston Concrete Bldg. & Mfg. Co., 34 Mont. 570, 87 Pac. 980; State v. Harden, 62 W. Va. 313, 58 S. E. 715; Kelly's Heirs v. McGuire, 15 Ark. 555; Murray v. State, 21 Tex. App. 620, 2 S. W. 757, 57 Am. Rep. 623; Palms v. Shawano County, 61 Wis. 211, 21 N. W. 77; In re Frey, 128 Pa. 593, 18 Atl. 178. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

[42] Wentworth v. Racine County, 99 Wis. 26, 74 N. W. 551. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

[43] Ex parte Hewlett, 22 Nev. 333, 40 Pac. 96. This case concerned

CORRECTION OF CLERICAL ERRORS AND MISPRINTS

58. Clerical errors or misprints, which, if uncorrected, would render the statute unmeaning or nonsensical, or would defeat or impair its intended operation, will not vitiate the act; they will be corrected by the court and the statute read as amended, provided the true reading is obvious and the real meaning of the legislature is apparent on the face of the whole enactment.[44]

A good illustration of this rule is found in the case of In re Frey.[45] A statute of Pennsylvania, relating to the apportionment of the expense of certain local improvements between a city and the county in which it was situated, provided that when the balance of expenditures should be against the city, any further expenditures should "be payable out of the treasury of said county, and be reimbursable out of the county treasury only when the balance shall be in favor of said city, and to the extent of such balance." It was held that the word "county," in the clause "be payable out of the treasury of said county," must be read as

the effect of a statute prohibiting the catching of trout in the rivers and lakes of the state; and it was held enforceable as to the rivers, though the provision as to the lakes was so contradictory that it could not be enforced. *See "Statutes," Dec. Dig. (Key No.) §§ 47, 188; Cent. Dig. §§ 47, 266, 267, 276.*

[44] Murphy v. Dobben, 137 Mich. 565, 100 N. W. 891; Mechanics' & Farmers' Sav. Bank v. Commonwealth, 128 Ky. 190, 108 S. W. 263, 32 Ky. Law Rep. 1022; State v. Cross, 44 W. Va. 315, 29 S. E. 527; Hutchings v. Commercial Bank of Danville, 91 Va. 68, 20 S. E. 950; Harper v. State, 109 Ala. 28, 19 South. 857; Thorn v. Silver (Ind.) 89 N. E. 943; State v. Radford, 82 Kan. 853, 109 Pac. 284; Garland Power & Development Co. v. State Board of Railroad Incorporation (Ark.) 127 S. W. 454. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[45] 128 Pa. 593, 18 Atl. 478; Lancaster County v. Lancaster City, 160 Pa. 411, 28 Atl. 854; Id., 170 Pa. 108, 32 Atl. 567. And see In re Clearfield County License Bonds, 10 Pa. Co. Ct. R. 593. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

"city," for there was plainly a clerical error, by which "county" was substituted for "city." It was said by the court: "The obvious meaning and purpose of the act is plain from the context. It needs no argument to show that the word 'county' was mistakenly written for 'city.' It is a mistake apparent on the face of the act, which may be rectified by the context. In making this correction we are not to be understood as correcting the act of the legislature. We are enabled to carry out the intention of the legislature from the plain and obvious meaning of the context, in which the real purpose or intention of the legislature is manifest. It falls within the province of the courts to correct a merely clerical error, even in an act of assembly, when, as it is written, it involves a manifest absurdity, and the error is plain and obvious. The power is undoubted, but it can only be exercised when the error is so manifest, upon an inspection of the act, as to preclude all manner of doubt, and when the correction will relieve the sense of the statute from an actual absurdity, and carry out the clear purpose of the legislature." So again, a statute provided that "the district court shall have and exercise all the civil and criminal jurisdiction heretofore vested in the county court and *not* divested by this act." The intention of the statute was perfectly plain, but it would be entirely defeated by the retention of the word "not" in this clause. It was accordingly held that, as the word must have been inserted by mistake, it might be disregarded and the statute construed as if it were not present.[46] In another case, the words of the statute were: "All persons performing labor, or furnishing machinery or boilers, or castings, or other materials for the construction, or repairing, or carrying on of any mill or manufactory, shall have a lien on such mill or manufactory for such work or labor done on such machinery, or boilers, or castings, or other material furnished by each respectively." It was held that the word "on" in the last clause was a clerical error for "or," and the act should be

[46] Chapman v. State, 16 Tex. App. 76. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

read as corrected.[47] Another statute, as printed, provided that "any person who alters and publishes as true, and with intent to defraud, any falsely altered, forged, or counterfeited bank bill * * * is guilty of forgery." The court held that the fourth word of this section, "alters," was a misprint or clerical error for "utters," as shown by the context, and accordingly read the statute as thus corrected.[48] Again, a statute enacted a penalty against all persons gambling or betting in a public place with any "card, token, or other article used as an instrument or means of such wagering on gaming." It was held that the word "on" was evidently, by a clerical error, substituted for "or" and the statute should be read as if the word were "or." [49] A statute which declares that "the officers of the board of health in cities to which this act is applicable, and also all officers created by the council or under legislative act," etc., "are hereby abolished," should be construed as abolishing the offices held by the officers mentioned.[50] The word "acts," in a statute, may be read "act," in the singular, when that is necessary to make the statute sensible and effective.[51] And when it is enacted that the "venire" in actions against railroads shall be laid in some county wherein the track of the company is situated, this may be held to mean the "venue," as otherwise the law would be unmeaning.[52] So, where the statute declared that "all penal judgments in the district court may be examined, and affirmed, reversed, or modified by the Supreme Court," it was held that it should

[47] Gould v. Wise, 18 Nev. 253, 3 Pac. 30. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[48] Bostick v. State, 34 Ala. 266. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[49] Tollett v. Thomas, L. R. 6 Q. B. 514. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[50] State ex rel. Attorney General v. Covington, 29 Ohio St. 102, 117. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[51] Jocelyn v. Barrett, 18 Ind. 128. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 276–279.*

[52] Graham v. Charlotte & S. C. R. Co., 64 N. C. 631. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

be read "final judgments," instead of "penal judgments." [53] In a statute of Tennessee, creating a new county, instead of a decimal point between figures describing the boundary, the sign of a degree was used. The calls would have been meaningless unless the sign were taken as a decimal point. And it was held that it should be so taken.[54] And generally speaking, this rule is applicable to all typographical errors which are plainly seen to be such, and for the correction of which the statute itself furnishes a sure guide.[55]

A case in which the principle of correcting clerical errors was carried almost to its extreme limits is found in Missouri, where a statute provided that an obligor or maker of a note should be allowed every just set-off and discount against the assignee or assignor "before judgment"; and it was held that the word "judgment" should be read "assignment," as it was evidently inserted by mistake.[56]

But it must be remembered that the courts are not at liberty to indulge in corrections and emendations of the written laws, unless it is perfectly plain that there is a clerical error or misprint, and unless the text, as it stands, with the error uncorrected, would be devoid of sensible meaning or contrary to the evident legislative intent.[57] This was the position taken by the court in Maryland with regard to a revenue law which provided that all property within

[53] Moody v. Stephenson, 1 Minn. 401 (Gil. 289). *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[54] Brown v. Hamlett, 8 Lea (Tenn.) 732. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[55] State v. Mulkey, 6 Idaho, 617, 59 Pac. 17. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[56] Frazler v. Gibson, 7 Mo. 271. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[57] The rule of statutory construction that, where it is manifest on the face of the act that an error has been made in the use of words, the court may correct it and read the statute as corrected, to make it accord with the obvious intent of the legislature, does not justify the court in reading such a change into the statute as that the effect would be to abrogate a specific provision made therein. Hilburn v. St. Paul, M. & M. Ry. Co., 23 Mont. 229, 58 Pac. 811. So in City of Ashland v. Maciejewski, 140 Wis. 642, 123 N. W. 130, a clause in the charter of a city provided that no city

the state, of every description, except certain property therein particularly named, should be "exempt" from taxation for state or local purposes. It was almost incredible that the legislature meant what the words imported. The obvious intention was to say that all property except that mentioned should be subject to taxation. Yet the court refused to correct the mistake, saying that the language used was perfectly plain and unambiguous, and must be taken in its natural import; and this, although they were obliged, taking the act as it read on its face, to pronounce it unconstitutional.[58] In another case, it appeared that a statute provided that "whenever an answer has been filed in a suit in which the defendant has had personal service made upon him to appear and file his answer, or when a judgment has been rendered in a case after answer filed by the defendant or his counsel, the party cast in the suit shall be considered duly notified of the judgment by the fact of its being signed by the judge." It was insisted that the act contained a manifest misprint, and that it should read "whenever no answer has been filed," etc. For as it stood it provided for two cases, in the alternative, which were in fact identical, viz., judgment signed after answer filed. And the court admitted that the first clause of the statute, as it stood, was surplusage, but held that this would not justify them in changing a word, by way of correction, as that would give an exactly opposite meaning to the clause.[59] And so again, under a statute providing that a demand against an estate in the probate court, if exhibited within two years, might be proved within three years, it was held that, though

officer should be accepted as a surety on any bond or other obligation made "by" the city, and it was contended that the word "by" should be read as "to" on the ground of a palpable mistake; but the court refused to adopt this construction, saying that a statute plain in its meaning and not unconstitutional or absurd on its face must be enforced as it reads. *See "Statutes," Dec. Dig. (Key No.) §§200, 201; Cent. Dig. §§ 278, 279.*

[58] Maxwell v. State ex rel. Baldwin, 40 Md. 273. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[59] De Sentmanat v. Soulé, 33 La. Ann. 609. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

"three" was substituted by mistake for "two," yet the court could not construe away the plain words of the law.[60]

EFFECT OF MISDESCRIPTIONS AND MISNOMERS

59. A misdescription or misnomer in a statute will not vitiate the enactment or render it inoperative, provided the means of identifying the person or thing intended, apart from the erroneous description, are clear, certain, and convincing.

It is an ancient maxim of the law, applicable to all written instruments alike, that "falsa demonstratio non nocet cum de corpore constat." [61] Accordingly, in the case of a statute, "the court will inspect the whole act, and if the true intention of the legislature can be reached, the false description will be rejected as surplusage, or words substituted, in the place of those wrongly used, which will give effect to the law." [62] For example, a word in a statute defining the boundaries of a county may be read "north" instead of "south," if it is clear that "north" was really intended.[63] So a misdescription of a municipal corporation, as by calling it a "city" when it is legally a "town," or by naming it a "county" when a "city" is intended, may be corrected by construction when the mistake clearly appears from the face of the statute.[64] And the use of the word

[60] Hicks v. Jamison, 10 Mo. App. 35. *See "Statutes," Dec. Dig. (Key No.) §§ 200, 201; Cent. Dig. §§ 278, 279.*

[61] Broom, Max. 629; Woodruff v. Mayor, etc., of Town of Orange, 32 N. J. Law, 49. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[62] Palms v. Shawano County, 61 Wis. 211, 21 N. W. 77; In re Bulger, 45 Cal. 553; McKee Land & Improvement Co. v. Williams, 63 App. Div. 553, 71 N. Y. Supp. 1141, affirmed 173 N. Y. 630, 66 N. E. 1112; Fortune v. Board of Com'rs of Buncombe County, 140 N. C. 322, 52 S. E. 950; Lancaster County v. Lancaster City, 170 Pa. 108, 32 Atl. 567. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[63] Palms v. Shawano County, 61 Wis. 211, 21 N. W. 77. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[64] White v. State, 121 Ga. 592, 40 S. E. 715; Lee v. Tucker, 130

"contestant" in a statute, when it clearly appears that "contestee" was intended, will not render the act void for uncertainty.[65]

On the same principle, a mistake in the date of passage, or the title, of an act of the legislature referred to by a subsequent amendatory act will not prevent the operative effect of the amendatory act, provided the latter so particularly refers to the subject-matter of the former as clearly to indicate the act intended to be amended.[66] And if a later statute expressly refers to a designated section of an earlier act, to which it can have no application, but there is another section of the prior statute to which, and to which alone, in view of the subject-matter, the later act can properly refer, it will be read according to the manifest purpose of the legislature, and the misdescription will not vitiate.[67] Moreover, a case of erroneous description may sometimes be helped out by extraneous evidence, provided it is adequate and convincing. Thus, in a case in New Jersey, an act of the legislature authorized the managers of a meadow draining scheme to purchase a property known as the "Dennis Mill" property, consisting of a designated quantity of land, with the water power, and the mills and other buildings thereon. In a private action, growing out of the operations of the managers under this statute, it was shown that there was no "Dennis Mill" property in the vicinity, but that "Dunn's Mill" property answered the description in the act and was the one intended by it. Hereupon, an injunction granted on filing a bill to restrain the purchase

Ga. 43, 60 S. E. 164; In re Frey, 128 Pa. 593, 18 Atl. 478. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[65] Speer v. Stephenson, 16 Idaho, 707, 102 Pac. 365. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[66] Madison, W. & M. Plank Road Co. v. Reynolds, 3 Wis. 287; School Directors of Dist. No. 5 v. School Directors of Dist. No. 10, 73 Ill. 249; In re Clearfield County License Bonds, 10 Pa. Co. Ct. R. 593; Harper v. State, 109 Ala. 28, 19 South. 857. *See "Statutes," Dec. Dig. (Key No.) §§ 126, 201; Cent. Dig. §§ 193, 279.*

[67] People v. King, 28 Cal. 266; Stoneman v. Whaley, 9 Iowa, 390; People v. Hill, 3 Utah, 334, 3 Pac. 75; Commonwealth, to Use of Allegheny City, v. Marshall, 69 Pa. 328. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

of the Dunn's Mill property, was dissolved.[68] But it is important to observe that there is a very material difference between a misdescription and an ambiguous or inadequate description. In the case of the former, the descriptive words are not applicable to the object which the legislature had in mind, but that object is capable of being otherwise identified. In the case of the latter, the descriptive words may be applicable to the legislative object, but that object cannot be identified. This distinction is well illustrated by a comparison of the case last adverted to with the case of State v. Partlow,[69] wherein the act in question forbade the sale of liquor "within three miles of Mt. Zion Church in Gaston county," and it was held inoperative and void because there were two churches of that name in that county, several miles apart. In the former case, there was a misdescription, but when the object was identified, the statute was held to apply to it. In the latter case, there was no misdescription, but the descriptive words were equally applicable to two different objects, and on account of the latent ambiguity, the act was held inoperative. It is also said that when the descriptive words constitute the very essence of the act, unless the description is so clear and accurate as to refer to the particular subject intended, and to be incapable of being applied to any other, the mistake is fatal.[70]

The same general rule covers the case of misnomers in a statute. In a legislative act, as in any private writing, a misnomer, whether it be of a person, a corporation, or a locality, will not be allowed to defeat the operation of the act, if it is quite evident that it is a misnomer, and the actual meaning of the legislature is clear.[71] For instance,

[68] Lindsley v. Williams, 20 N. J. Eq. 93. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[69] 91 N. C. 550, 49 Am. Rep. 652. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[70] Blanchard v. Sprague, 3 Sumn. 279, Fed. Cas. No. 1,517. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[71] Chancellor of Oxford's Case, 10 Coke, 53a; State ex rel. State Agr. Soc. v. Timme, 56 Wis. 423, 14 N. W. 604; Nazro v. Merchants' Mut. Ins. Co. of Milwaukee, 14 Wis. 295; Attorney General v.

where an act names "Lewis Mankel" as entitled to a sum of money, the fact that the claimant's name is "Louis Mankel" should not deprive him of the right to receive it.[72]

REJECTION OF SURPLUSAGE

60. It is the duty of the courts to give effect, if possible, to every word of the written law. But if a word or clause be found in a statute which appears to have been inserted through inadvertence or mistake, and which is incapable of any sensible meaning, or which is repugnant to the rest of the act and tends to nullify it, and if the statute is complete and sensible without it, such word or clause may be rejected as surplusage.

In giving construction to a statute, the courts are bound, if it be possible, to give effect to all its several parts. No sentence, clause, or word should be construed as unmeaning and surplusage, if a construction can be legitimately found which will give force to and preserve all the words of the statute.[73] "It is a canon of construction that, if it be possible, effect must be given to every word of an act of Parliament, but that, if there be a word or phrase therein to which no sensible meaning can be given, it must be eliminated." [74] But while the endeavor of the courts should be in the direction of harmonizing and making operative the whole statute, in all its words and parts, yet, in proper cases, the construction of a statute, as of any private writing, is governed by the maxims "utile per inutile non vitiatur" and "surplusagium non nocet." And if it clearly ap-

Chicago & N. W. Ry. Co., 35 Wis. 425, 557. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[72] Mankel v. United States, 19 Ct. Cl. 295. *See "Statutes," Dec. Dig. (Key No.) § 201; Cent. Dig. § 279.*

[73] Hagenbuck v. Reed, 3 Neb. 17; Leversee v. Reynolds, 13 Iowa, 310. *See "Statutes," Dec. Dig. (Key No.) § 202; Cent. Dig. § 280.*

[74] Stone v. Mayor, etc., of Yeovil, L. R. 1 C. P. Div. 691, 701. *See "Statutes," Dec. Dig. (Key No.) § 202; Cent. Dig. § 280.*

pears, from all the proper sources of interpretation, that a clause or provision of a statute was inserted through inadvertence, especially if it conflicts with the rest of the act and would tend to limit or impair its application, it will be disregarded.[75] For example, an act of Congress provided that if any person should attempt to bribe a revenue officer of the United States to commit or connive at a fraud upon the revenue "and be thereof convicted," such person should "be liable to indictment," etc. It was held that the words "and be thereof convicted" must be rejected as surplusage, because their retention in the statute would render it entirely meaningless and inoperative, whereas, this phrase being exscinded, the statute remained complete, sensible, and operative.[76] So again a statute of New Hampshire provided that whenever an assignment should be made under its terms, "all attachments shall be void except such as have been made three months previous to such assignment, and all payments, pledges, mortgages, conveyances, sales, and transfers made within three months next before such assignment, and after the passage of this act, and before the 1st of September next, and also all payments, etc., whenever made, if fraudulent as to creditors, shall be void." It was considered that no effect consistent with the plain intent of the statute could possibly be given to the words "before the 1st of September next," and consequently they must be rejected as without meaning.[77] So, also, the word "such," frequently used in statutes, when it is apparent that it has no reference to anything preceding it, may be re-

[75] Pond v. Maddox, 38 Cal. 572; United States v. Jackson, 143 Fed. 783, 75 C. C. A. 41; In re Vanderberg, 28 Kan. 243; Settlers' Irr. Dist. v. Settlers' Canal Co., 14 Idaho, 504, 94 Pac. 829; County Board of Election Com'rs of Gibson County v. State ex rel. Sides, 148 Ind. 675, 48 N. E. 226; Paxton & Hershey Irrigating Canal & Land Co. v. Farmers' & Merchants' Irrigation & Land Co., 45 Neb. 884, 64 N. W. 343, 29 L. R. A. 853, 50 Am. St. Rep. 585. *See "Statutes," Dec. Dig. (Key No.) § 202; Cent. Dig. § 280.*

[76] United States v. Stern, 5 Blatchf. 512, Fed. Cas. No. 16,389. *See "Statutes," Dec. Dig. (Key No.) § 202; Cent. Dig. § 280.*

[77] Leavitt v. Lovering, 64 N. H. 607, 15 Atl. 414, 1 L. R. A. 58. *See "Statutes," Dec. Dig. (Key No.) § 202; Cent. Dig. § 280.*

jected.[78] In an act of Missouri, it was provided that "if any guardian of any white female under the age of eighteen years, or of any other person to whose care or protection any such female shall have been confided, shall defile her by carnally knowing her," he should be liable to a punishment. It was held that the word "of" before "any other person" must be rejected, as it limited the applicability of the statute contrary to the obvious purpose of the legislature.[79]

But where an enactment is plain and sensible and cannot apply to the case in hand according to any meaning which may properly be ascribed to the words, whether broad or narrow, popular or technical, it is not permissible for the courts to strike out (nor to interpolate) any words in order to make it so apply, even though it may be clear to them that the case before them is as fully within the mischief to be remedied as the cases provided for; for this would be amending the law under pretense of construing it, which is beyond the province of the judiciary.[80]

INTERPOLATION OF WORDS

61. Words may be interpolated in a statute, or silently understood as incorporated in it, where the meaning of the legislature is plain and unmistakable, and such supplying of words is necessary to carry out that meaning and make the statute sensible and effective.

The langauge used in a statute must, if possible, be so construed as to give it some force and effect, ut res magis valeat quam pereat; and consequently, when the language is elliptical, the words which are obviously necessary to

[78] State v. Beasley, 5 Mo. 91. *See "Statutes," Dec. Dig. (Key No.) § 202; Cent. Dig. § 280.*

[79] State v. Acuff, 6 Mo. 54. *See "Statutes," Dec. Dig. (Key No.) § 202; Cent. Dig. § 280.*

[80] Commonwealth v. Gouger, 21 Pa. Super. Ct. 217. *See "Statutes," Dec. Dig. (Key No.) § 202; Cent. Dig. § 280.*

complete the sense will be supplied.[81] But words should never be supplied or changed in a statute, unless to effect a meaning clearly shown by the other parts of the statute, and to carry out an intent somewhere expressed.[82] Where a word is evidently omitted by mistake in one section of a statute, which omission is explained in another part of the same statute by a reference to such section, the defective section may be enforced according to such explanation.[83] Where a law fixed the penalty for a certain act at "not less than one nor more than three hundred dollars," it was held that the minimum penalty was one hundred dollars. In effect, this was interpolating the word "hundred" after "one" in accordance with the evident meaning of the legislature, though contrary to the literal sense of the law.[84] Again, if the law prescribes that a person convicted of crime shall be imprisoned not less than two nor more than five years, and a statute adds the words "or by fine and imprisonment, one or both, at the discretion of the jury," it is the duty of the court to supply the words "be punished" after the word "or" where it first appears in the amendment.[85] So, when

[81] Nichols v. Halliday, 27 Wis. 406; City of Philadelphia v. Ridge Ave. Pass. Ry. Co., 102 Pa. 190; In re Wainewright, 1 Phillips, Ch. 258; James v. United States Fidelity & Guar. Co., 133 Ky. 299, 117 S. W. 406; Freeman v. Collier Racket Co., 44 Tex. Civ. App. 177, 105 S. W. 1129; In re Howard's Estate, 80 Vt. 489, 68 Atl. 513; State ex rel. Minneapolis, St. P. & S. S. M. R. Co. v. Railroad Commission, 137 Wis. 80, 117 N. W. 846. *See "Statutes," Dec Dig. (Key No.) § 203; Cent. Dig. § 281.*

[82] Lane v. Schomp, 20 N. J. Eq. 82; Barron v. Kaufman, 131 Ky. 642, 115 S. W. 787; Inhabitants of Orvil Tp. v. Borough of Woodcliff, 61 N. J. Law, 107, 38 Atl. 685; Kunkaluan v. Gibson, 171 Ind. 503, 84 N. E. 985. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[83] Brinsfield v. Carter, 2 Ga. 143. Where a statute applying to specified persons omits a word in a second enumeration which appears in the first, it may be supplied; the omission being treated as inadvertent. State v. Radford, 82 Kan. 853, 109 Pac. 284. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[84] Worth v. Peck, 7 Pa. 268. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[85] Turner v. State, 40 Ala. 21. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

an enrolled act limits taxation to "one half of percentum," and the act, as published by authority, expresses the limitation to be "one half of one per centum," the two expressions will be held to mean the same thing.[86] Again, where a statute denounced a penalty against "every person who shall buy, sell, or receive from any slave any commodity," etc., it was held that it must be read as if the word "to" were inserted after "sell." [87] A statute of Minnesota provided for an action by any person in possession of land against any person claiming "an estate, interest, or lien therein adverse," and by any person out of possession against one claiming "an estate or interest therein adverse," etc. It was considered that the word "lien" having been added to the first clause by amendment, its omission from the second was an oversight, and not intentional, and that a "lien" was an estate or interest litigable by a person out of possession.[88] In an English case, a statute made it penal "to be in possession" of game after a certain day. If construed literally, this would apply to the case of one who had lawfully come into possession of game before that day and continued to have it in possession after that day. To avoid this injustice, it was construed as applying only where the possession did not begin until after the close of the season. This, in effect, amounted to interpolating the words "to begin" before "to be in possession." [89] In Ohio, an act passed May 3, 1852, provided that it should take effect "from and after the fifteenth day of May next." It was contended that this meant May 15, 1853. But the court found, from an examination of the legislative journals, that the bill was passed by the concurrent vote of the two houses on April 28, though it was not signed until six days later. And it was considered to be evident that the act, in

[86] Goldsmith v. Augusta & S. R. Co., 62 Ga. 468. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[87] Worrell v. State, 12 Ala. 732. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[88] Donohue v. Ladd, 31 Minn. 244, 17 N. W. 381. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[89] Simpson v. Unwin, 3 Barn. & Ad. 134. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

the mind of the legislature, spoke from the 28th of April, and consequently it should be read as if it declared that it should take effect on the "fifteenth of May next hereafter." This last word was in effect supplied by the court.[90]

But the interpolation of words is permissible only for the purpose of bringing out and giving effect to the evident intention of the legislature, not to make the statute embrace or include matters or cases which the legislature did not expressly include, however plausible may be the conjecture that those matters or cases were within the legislative purview.[91] Thus, the statutory enumeration of persons of the same class by specific terms has the effect of restricting the statute to that class of individuals, and no consideration of the mischief to be remedied by the act is sufficient to justify the interpolation of other words to bring within the operation of the statute another class of persons whose business, or whose relation to the general subject-matter of the act, is distinctly different.[92] This rule is specially and peculiarly applicable to penal and criminal statutes. A public or penal offense cannot be created by implication, nor can any person or class of persons, or any act or class of acts, be brought within the penal provisions of a law by the process of interpolating or supplying words.[93] This principle is well illustrated by a recent case involving the construction of a statute which was intended to prohibit and punish the sale of adulterated or misbranded food or drugs. Both the terms "food" and "drug" were defined in the act, and the essentials constituting adulteration or misbranding were set forth. But the clause of the statute which enu-

[90] State ex rel. Fosdick v. Mayor, etc., of Incorporated Village of Perrysburg, 14 Ohio St. 472. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[91] Johnson v. Barham, 99 Va. 305, 38 S. E. 136. And see what is said concerning "casus omissus," supra, p. 80. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[92] Ex parte Brown, 21 S. D. 515, 114 N. W. 303. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[93] Western Union Tel. Co. v. Axtell, 69 Ind. 199; State v. Jaeger, 63 Mo. 403; Howell v. State, 54 Mo. 400; Ex parte Brown, 21 S. D. 515, 114 N. W. 303. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281*

merated the persons who should be liable to its penalties, although this clause referred to "any food or drug which is adulterated," etc., only named "innkeepers, hotel keepers, restaurant keepers, and boarding house keepers." It was held that a druggist selling medicinal preparations not branded or marked according to the law was not liable to punishment, for the court did not feel warranted in supplying the word "druggist" in the phrase quoted.[94] But, on the other hand, the court in Kentucky has lately declared that a statute relating to certain acts contrary to public morality, which was technically defective because it merely mentioned acts of that character without prohibiting them or providing any penalty, should not be allowed to fail, as it was the evident intention of the legislature to make it unlawful to commit the acts in question and to prohibit all persons from doing them. Hence the court felt justified in supplying the words "it shall be unlawful for any person" at the beginning of the section, or the words "shall be guilty of an offense" at the end of it.[95]

CONSTRUING TERMS WITH REFERENCE TO SUBJECT

62. The words of a statute are to be construed with reference to its subject-matter. If they are susceptible of several meanings, that one is to be adopted which best accords with the subject to which the statute relates.

There is no rule of construction which requires the same meaning always to be given to the same word, when used in different connections in the same statute or in different statutes.[96] On the contrary, such is the flexibility of lan-

[94] Ex parte Brown, 21 S. D. 515, 114 N. W. 303. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[95] Commonwealth v. Herald Pub. Co., 128 Ky. 424, 108 S. W. 892, 32 Ky. Law Rep. 1293. *See "Statutes," Dec. Dig. (Key No.) § 203; Cent. Dig. § 281.*

[96] Rupp v. Swineford, 40 Wis. 28. *See "Statutes," Dec. Dig. (Key No.) §§ 191, 209; Cent. Dig. §§ 286, 302, 303.*

guage and the want of fixity in many of our commonest expressions, that a word or phrase may bear very different meanings according to the connection in which it is found. Hence the rule that the terms of a statute are always to be interpreted with reference to the subject-matter of the enactment.[97] For example, the word "piracy" may have at least two meanings. But if this word were found in a statute relating to copyright on literary productions, no one could suppose that it meant robbery committed on the high seas. Conversely, in an act defining and punishing offenses against the law of nations, it could not be understood as meaning the unlawful appropriation of the literary property of another. So again, "stock" might mean a very different thing, when used in relation to husbandry, or to the allowance to a widow of a year's maintenance out of her husband's "stock, crop, and provisions," from what it would mean if used in a statute relating to corporations.[98] So it is also with the common phrase "legal representatives." This term frequently means "executors or administrators." But when found in an act for the relief of landholders, it may mean representatives in the land itself, as, by a purchase under a sheriff's sale on a judgment against the landholder.[99] The word "misdemeanor," as used in a statute providing that if a sheriff shall have been guilty of "any

[97] See Smith v. Helmer, 7 Barb. (N. Y.) 416; Commonwealth ex rel. Bridgewater School Directors v. Council of Montrose Borough, 52 Pa. 391; Wyman v. Fabens, 111 Mass. 77; Hubbard v. Wood, 15 N. H. 74; Hartnett v. State, 42 Ohio St. 568; Smiley v. Kansas, 196 U. S. 447, 25 Sup. Ct. 289, 49 L. Ed. 546; People ex rel. Whipple v. Judge of Saginaw Circuit Court, 26 Mich. 342; State v. Smiley, 65 Kan. 240, 69 Pac. 199, 67 L. R. A. 903; City of Houston v. Potter, 41 Tex. Civ. App. 381, 91 S. W. 389. *See "Statutes," Dec. Dig. (Key No.) § 191.*

[98] Van Norden v. Primm, 3 N. C. 149. *See "Statutes," Dec. Dig. (Key No.) § 191.*

[99] Thayer v. Pressey, 175 Mass. 225, 56 N. E. 5; Merchants' Nat. Bank v. Abernathy, 32 Mo. App. 211; Hogan v. Page, 2 Wall. 605, 17 L. Ed. 854; Mutual Life Ins. Co. v. Armstrong, 117 U. S. 591, 6 Sup. Ct. 877, 29 L. Ed. 997; Commonwealth ex rel. Kreber v. Bryan, 6 Serg. & R. (Pa.) 81; Barbour v. National Exch. Bank, 45 Ohio St. 133, 12 N. E. 5; Lasater v. First Nat. Bank of Jacksboro (Tex. Civ. App.) 72 S. W. 1054. *See "Statutes," Dec. Dig. (Key No.) § 191.*

default or misdemeanor in his office" the party aggrieved may apply for leave to prosecute on his official bond, does not denote a criminal offense, but refers to a trespass done by a sheriff in his official capacity.[100] Again, an English statute imposing an inheritance tax made mention of "a successor who shall have been competent to dispose by will of a continuing interest in such property." It was held that the words "competent to dispose by will" referred to the interest in the property and not to the personal capacity; and hence one having a sufficient estate or interest was affected by the act, although a lunatic or a married woman, and therefore not "competent" in the other sense.[101] So also, in some instances, by judicial construction, the extent and force of the term "void," when used in statutes, have been limited so as to make it mean "voidable," or to be made void by some plea or act of the party in whose favor the statutes are set up.[102] Again, it is held that the legal meaning of the term "destroy," as used in the act of Congress providing for the punishment of a party destroying a vessel, is to unfit the vessel for service, with intent to defraud the underwriters, beyond the hope of recovery by ordinary means.[103] On the same principle, under a statute which imposes a fine upon any person who, in the nighttime, shall willfully disturb "any neighborhood or family,"

[100] State v. Mann, 21 Wis. 684. And see In re Bowman, 7 Mo. App. 569; State v. Hastings, 38 Neb. 584, 55 N. W. 774; Holman v. Trustees of School Dist. No. 5, 77 Mich. 605, 43 N. W. 996, 6 L. R. A. 534; State v. Borowsky, 11 Nev. 119. *See "Statutes," Dec. Dig. (Key No.) § 191.*

[101] Attorney General v. Hallett, 2 Hurl. & N. 368. *See "Statutes," Dec. Dig. (Key No.) § 191.*

[102] Green v. Kemp, 13 Mass. 515, 7 Am. Dec. 169; Smith v. Saxton, 6 Pick. (Mass.) 483. And see United States v. Winona & St. P. R. Co., 67 Fed. 948, 15 C. C. A. 96; Larkin v. Saffarans (C. C.) 15 Fed. 147; Van Shaack v. Robbins, 36 Iowa, 201; Frazier v. Jeakins, 64 Kan. 615, 68 Pac. 24, 57 L. R. A. 575; State v. Richmond, 26 N. H. 232. *See "Statutes," Dec. Dig. (Key No.) § 191.*

[103] United States v. Johns, 1 Wash. C. C. 363, Fed. Cas. No. 15,481. And see Edmundson v. Pittsburgh, M. & Y. R. Co., 111 Pa. 316, 2 Atl. 404; Monongahela Nav. Co. v. Coon, 6 Pa. 379, 47 Am. Dec. 474; In re McCabe's License, 11 Pa. Super. Ct. 560. *See "Statutes," Dec. Dig. (Key No.) § 191.*

an indictment will lie for disturbing a woman who occupies a dwelling house alone.[104] A statute authorizing the courts, in certain cases, to render such judgment as substantial justice shall require, means that they shall render substantial legal justice, ascertained and determined by fixed rules and positive statutes, and not the abstract varying notions of equity entertained by each individual.[105]

These illustrations will suffice to show the application of the rule under consideration. It is based (as all valid rules of interpretation are based) upon the effort to ascertain the real meaning and intention of the legislature, correlating with the well-known rule of language that words invariably take their color from the terms with which they are associated and the subject in reference to which they are used. It should be mentioned, as a corollary from this rule, that where a statute is divided into separate subjects or articles, having appropriate headings, it must be presumed that the provisions of each article are controlling upon the subject thereof, and operate as a general rule for settling such questions as are embraced therein.[106] Moreover, when a statute has been enacted with special reference to a particular subject, and by another statute its provisions are directed in general terms to be applied to another subject of an essentially different nature, the adopting statute must be taken to mean that the provisions of the original statute shall be restrained and limited to such only as are applicable and appropriate to the new subject.[107]

[104] Noe v. People, 39 Ill. 96. And see Hesnard v. Plunkett, 6 S. D. 73, 60 N. W. 159; Berry v. Hanks, 28 Ill. App. 51. *See "Statutes," Dec. Dig. (Key No.) § 191; "Breach of the Peace," Cent. Dig. § 1.*

[105] Stevens v. Ross, 1 Cal. 94. *See "Statutes," Dec. Dig. (Key No.) § 191.*

[106] Griffith v. Carter, 8 Kan. 565. *See "Statutes," Dec. Dig. (Key No.) § 191.*

[107] Jones v. Dexter, 8 Fla. 276. *See "Statutes," Dec. Dig. (Key No.) § 191.*

TECHNICAL AND POPULAR MEANING OF WORDS

63. The words of a statute are to be taken in their ordinary and popular meaning, unless they are technical terms or words of art, in which case they are to be understood in their technical sense. But popular words may bear a technical meaning, and technical words may have a popular signification, and they should be so construed when that is the evident intention of the legislature, or when it is necessary in order to make the statute operative.

"It is a familiar rule in the construction of legal instruments," says the court in South Carolina, "alike dictated by authority and common sense, that common words in the instrument are to be extended to all the objects which, in their usual acceptation, they describe or denote, and that the technical terms are to be allowed their technical meaning and effect; unless, in either case, the context indicates that such a construction would frustrate the real intention of the draughtsman." [108] As the first part of this rule,

[108] De Veaux v. De Veaux, 1 Strob. Eq. 283. "Words are generally to be understood in their usual and most known signification, not so much regarding the propriety of grammar as their general and popular use." But "terms of art, or technical terms, must be taken according to the acceptation of the learned in each art, trade, and science." 1 Bl. Comm. 59. A statute of Kentucky provides that "all words and phrases shall be construed and understood according to the common and approved usage of language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed and understood according to such meaning." In relation to this statute, the Supreme Court of that state says that it is "only declaratory of a part of the common law on that subject. Words in a statute are always to be understood according to the approved use of language. But there are other rules of construction, of equal dignity and importance, which must not be overlooked, and which, although not incorporated in our statute, are as binding upon the courts as if embodied in it. One of these rules is that every statute ought to

therefore, we may state that, in the interpretation of statutes, words of common use are generally to be taken in their natural, plain, and ordinary signification, as they are familiarly employed in the everyday speech of the people,[109] or rather, perhaps, as they are employed by those

be expounded, not according to the letter, but according to the meaning; and another, that every interpretation that leads to an absurdity ought to be rejected; and still another, that a law ought to be interpreted in such manner as that it may have effect and not be found vain and illusive." Bailey v. Commonwealth, 11 Bush. (Ky.) 688. It was also a maxim of the Roman law that "verba mere æquivoca, si per communem usum loquendi in intellectu certo sumuntur, talis intellectus præferendus est"; that is to say, in the case of words which are of equivocal or double meaning, if they are taken by the common usage of speech in a certain sense, such sense is to be preferred in interpretation. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[109] Proprietors of Bridges v. Hoboken Land & Improvement Co., 1 Wall. 116, 17 L. Ed. 571; Neilson v. Lagow, 12 How. 98, 13 L. Ed. 909; Schriefer v. Wood, 5 Blatchf. 215, Fed. Cas. No. 12,481; Corning v. Board of Com'rs of Meade County, 102 Fed. 57, 42 C. C. A. 154; Brun v. Mann, 151 Fed. 145, 80 C. C. A. 513, 12 L. R. A. (N. S.) 154; United States v. Chesbrough (D. C.) 176 Fed. 778; Mayor, etc., of City of Wetumpka v. Winter, 29 Ala. 651; Favers v. Glass, 22 Ala. 621, 58 Am. Dec. 272; Quigley v. Gorham, 5 Cal. 418, 63 Am. Dec. 139; Gross v. Fowler, 21 Cal. 392; Ex parte McCoy, 10 Cal. App. 116, 101 Pac. 419; Duehay v. District of Columbia, 25 App. D. C. 434; In re Mark Cross Co., 26 App. D. C. 101; Logsdon v. Logsdon, 109 Ill. App. 194; Boyer v. State, 169 Ind. 691, 83 N. E. 350; Indlanapolis Northern Traction Co. v. Brennan (Ind.) 87 N. E. 215; Massey v. Dunlap, 146 Ind. 350, 44 N. E. 641; City of Maysville v. Maysville St. R. & Transfer Co., 128 Ky. 673, 108 S. W. 960, 32 Ky. Law Rep. 1366; New Orleans Canal & Banking Co. v. Schroeder, 7 La. Ann. 615; Parkinson v. State, 14 Md. 184, 74 Am. Dec. 522; Green v. Weller, 32 Miss. 650; Smith v. Missouri Pac. R. Co., 143 Mo. 33, 44 S. W. 718; Henry & Coatsworth Co. v. Evans, 97 Mo. 47, 10 S. W. 868, 3 L. R. A. 332; State v. Byrum, 60 Neb. 384, 83 N. W. 207; In re Opinion of Justices, 74 N. H. 606, 68 Atl. 873; City of New York v. Manhattan Ry. Co., 192 N. Y. 90, 84 N. E. 745; People ex rel. McEachron v. Bashford, 128 App. Div. 351, 112 N. Y. Supp. 1143; State v. Cody (Tex. Civ. App.) 120 S. W. 267; Engelking v. Von Wamel, 26 Tex. 469; Willis v. Kalmbach, 109 Va. 475, 64 S. E. 342, 21 L. R. A. (N. S.) 1009; Harrison v. Wissler, 98 Va. 597, 36 S. E. 982; Slack v. Jacob, 8 W. Va. 612; Chartered Mercantile Bank v. Wilson, L. R. 3 Ex. Div. 108. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

who are accustomed to use words correctly and who are conversant with the subject to which the statute relates.[110]

To take for an example a very common and familiar word, the term "child," as used in statutes, wills, and other legal documents, may have many different meanings, according to the context and the intention of the writer. But in common speech it always denotes a person of immature years, who has not yet reached the stature of manhood or the judgment, discretion, and experience of an adult; and it is to be understood in this sense in statutes, unless there is a plain indication of its having been meant in some other signification. Hence in a statute defining and punishing aggravated assaults, the word "child" is not necessarily synonymous with "minor," but means one under the age of puberty, or at least one who has not attained the size, knowledge, and discretion of an adult.[111] Again, unless the context plainly requires it, this term will not be understood as including grandchildren, since that is not its common use;[112] nor will it include a descendant who has attained the age of majority, although, when used with special reference to the parental relation, it is equivalent to "son" or "daughter," irrespective of age.[113] Neither will the word "child," as used in a statute or a will, include illegitimate offspring, unless such a construction is necessary

[110] Supra, p. 143. And see Grenfell v. Com'rs of Revenue, L. R. 1 Ex. Div. 248; Ramsey's Estate v. Whitbeck, 81 Ill. App. 210. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[111] McGregor v. State, 4 Tex. App. 599; Allen v. State, 7 Tex. App. 298; Bell v. State, 18 Tex. App. 53, 51 Am. Rep. 293; Collins v. State, 97 Ga. 433, 25 S. E. 325, 35 L. R. A. 501. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[112] Shanks v. Mills, 25 S. C. 358; Waldron v. Taylor, 52 W. Va. 284, 45 S. E. 336; Winsor v. Odd Fellows' Ben. Ass'n, 13 R. I. 149; In re Curry's Estate, 39 Cal. 529; Burgess v. Hargrove, 64 Tex. 110; Starrett v. McKim, 90 Ark. 520, 119 S. W. 824. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[113] Mott v. Central R. R., 70 Ga. 680, 48 Am. Rep. 595; Putnam v. Southern Pac. Co., 21 Or. 230, 27 Pac. 1033; Murray v. Gulf, C. & S. F. Ry. Co., 73 Tex. 2, 11 S. W. 125; Rex v. Inhabitants of St. John Bedwardine, 5 Barn. & Adol. 169; Markover v. Krauss, 132 Ind. 294, 31 N. E. 1047, 17 L. R. A. 806. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

to carry into effect the manifest intention of the writer.[114] And it is rarely applied to stepchildren, and should not be so understood unless plainly intended.[115]

So again, in their ordinary and familiar signification, the words "sell" and "give" have not the same meaning, but are commonly used to express different modes of transferring the right to property from one person to another. A sale means a transfer for a valuable consideration, while a gift signifies a gratuitous transfer. And these terms should be so construed in a statute, unless there is something in the act to indicate that the legislature meant to use them otherwise.[116] Again, a vessel lying at a wharf in process of construction, being yet unfinished, and for that reason not yet fit for navigation, cannot be deemed within a statute provision or exception relating to vessels "engaged in navigation." [117] And particularly, it is said, "when particular terms are used to describe the objects of taxation, they should be construed according to their popular acceptation, not by any refined or strained analogies, and especially when that acceptation corresponds with the use of those terms in recent legislative enactments." [118]

But "verba artis ex arte"—terms of art should be ex-

[114] Bell v. Bumstead, 60 Hun, 580, 14 N. Y. Supp. 697; Gates v. Seibert, 157 Mo. 254, 57 S. W. 1065, 80 Am. St. Rep. 625; Overseers of Poor of Forest City v. Overseers of Poor of Damascus, 176 Pa. 116, 34 Atl. 351; McDonald v. Pittsburgh, C. C. & St. L. Ry. Co., 144 Ind. 459, 43 N. E. 447, 32 L. R. A. 309, 55 Am. St. Rep. 185; Floyd v. Floyd, 97 Ga. 124, 24 S. E. 451; Johnstone v. Taliaferro, 107 Ga. 6, 32 S. E. 931, 45 L. R. A. 95. See Marshall v. Wabash R. Co., 120 Mo. 275, 25 S. W. 179; Landry v. American Creosote Works, 119 La. 231, 43 South. 1016, 11 L. R. A. (N. S.) 387. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[115] Tepper v. Supreme Council Royal Arcanum, 59 N. J. Eq. 321, 45 Atl. 111; Cutter v. Doughty, 23 Wend. (N. Y.) 513. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[116] Parkinson v. State, 14 Md. 184, 74 Am. Dec. 522; Siegel v. People, 106 Ill. 89. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[117] The Vermont, 6 Ben. 115, Fed. Cas. No. 16,917. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[118] Deitz v. Beard, 2 Watts (Pa.) 170; Nix v. Hedden (C. C.) 39 Fed. 109. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

plained from their usage in the art to which they belong.[119] Where a word used in a statute has a fixed technical meaning, the legislature must be understood as employing it in that sense, unless there is something in the context which shows that it was intended to be used in a different sense.[120] Where, however, a word which has both a technical and a common or popular meaning is used in a constitution or a statute, the courts will accord to it its popular signification, unless the very nature of the subject indicates, or the context suggests, that it is used in its technical sense.[121] For instance, although the strictest legal propriety may perhaps require us to speak of "actions at law" and "suits in equity," yet in common use, these two terms are indifferently applied to any proceeding in either forum; and hence the word "action" in a statute will be held to include suits in chancery.[122] So again, where a statute de-

[119] 2 Kent, Comm. 556, note. The word "telephone," as used in a statute, is a term of art, and evidence is admissible to explain its proper meaning. Hockett v. State, 105 Ind. 250, 5 N. E. 178, 55 Am. Rep. 201. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[120] State v. Smith, 5 Humph. (Tenn.) 394; Katzman v. Commonwealth, 140 Ky. 124, 130 S. W. 990; People ex rel. Grant v. Lane, 196 N. Y. 520, 89 N. E. 1108. "Where technical words are used in reference to a technical subject, they are primarily interpreted in the sense in which they are understood in the science, art, or business in which they have acquired it." Maxwell, Interp. (2d Ed.) 69. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[121] Weill v. Kenfield, 54 Cal. 111; Southern Bell Telephone & Telegraph Co. v. D'Alemberte, 39 Fla. 25, 21 South. 570; Maiss v. Metropolitan Amusement Ass'n, 241 Ill. 177, 89 N. E. 268; Weirich v. State, 140 Wis. 98, 121 N. W. 652, 22 L. R. A. (N. S.) 1221. Where a technical meaning of a word is relied on to sustain plaintiff's cause of action, and such meaning is not commonly understood nor given in dictionaries or legal works, but the word has a meaning commonly known and understood, the burden is on plaintiff to show the technical meaning of such term, and, in the absence of such evidence, it will be presumed to have been used in the sense in which it is commonly used and understood by people in general. Continental Hose Co. No. 1 v. City of Fargo, 17 N. D. 5, 114 N. W. 834. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[122] Lamson v. Hutchings, 118 Fed. 321, 55 C. C. A. 245; Coatsworth v. Barr, 11 Mich. 199; Dullard v. Phelan, 83 Iowa, 471, 50

clares that an unrecorded deed shall not be valid "at law," it does not mean simply that it shall be held invalid in a court of law only, but in all courts. "At law" is not an expression which, in a statute, signifies merely a legal tribunal as distinguished from an equitable jurisdiction, but it means the system of jurisprudence generally, whether legal or equitable.[123] And so, again, what is the meaning of the word "residence," as used in any particular statute, must be determined upon its particular circumstances, as this term is often used to express a different meaning according to the subject-matter.[124]

Limitations of the Rule

Although common words are primarily to be taken in their popular sense, and technical words in their technical sense, yet this rule is subordinate to the great fundamental rule that the real intention of the legislature must in all cases prevail. Hence a popular word may have the force and effect of a technical word, if the legislature so designed. For example, an act provided that half of the rights of a husband or wife to property held in common, upon the death of either "shall go" to the survivor; and it was held that this meant that such property "shall vest" in the survivor.[125] And per contra, a technical word, capable of bearing a popular meaning also, shall be taken in the latter sense, if the obvious design of the act requires it. Thus, the term "purchaser" may be understood, when the

N. W. 204; Magill v. Parsons, 4 Conn. 317; Webb v. Allen, 15 Tex. Civ. App. 605, 40 S. W. 342; Miller v. Rapp, 7 Ind. App. 89, 34 N. E. 125; Hall v. Bartlett, 9 Barb. (N. Y.) 297; Branyan v. Kay, 33 S. C. 283, 11 S. E. 970; Niantic Mills Co. v. Riverside & Oswego Mills, 19 R. I. 34, 31 Atl. 432. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[123] Fleming v. Burgin, 37 N. C. 584; Hooker v. Nichols, 116 N. C. 157, 21 S. E. 207. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent Dig. §§ 266, 270.*

[124] Long v. Ryan, 30 Grat. (Va.) 718. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[125] Broad v. Broad, 40 Cal. 493; Plass v. Plass, 121 Cal. 131, 53 Pac. 448. And see Jackson County v. Derrick, 117 Ala. 348, 23 South. 193. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

intention disclosed by the context requires it, in its ordinary commercial sense as equivalent to "buyer." [126] In determining the construction of a statute, even of one which authorizes the confiscation of property for an offense by its owner, technical words are not to be confined to a strict technical sense, when so doing will defeat the evident intent of the statute. Hence the federal statute declaring private property used in promoting insurrection to be "lawful subject of prize and capture" is not to be restricted to property taken at sea (though that is the technical meaning of the words), when it was the evident design of Congress to make it apply equally to such property seized on land.[127] To take another illustration, St. 15 & 16 Vict. c. 86, § 40, provides for the cross-examination of "any party having filed an affidavit to be used or which shall be used" in a proceeding in chancery. In order to make the act operative and intelligible, it was found necessary to construe the word "party," not in its proper legal sense, but in the decidedly colloquial usage in which it is made the equivalent of "person." [128] Again, if the effect of construing the words of a statute according to their technical signification would be to render it inoperative, but it would have a reasonable operation by construing them according to their common meaning, the latter mode of construction should be adopted.[129] For example, a statute of Alabama provided that when any person should be assassinated or murdered "by any outlaw, or person in disguise, or mob," his next of kin should have an action for damages against the county. Now the word "outlaw" has a well-defined meaning at common law and in English statutes. But the court consid-

[126] Ex parte Hillman, L. R. 10 Ch. Div. 622; Cummings v. Coleman, 7 Rich. Eq. (S. C.) 509, 62 Am. Dec. 402. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[127] Union Ins. Co. v. United States, 6 Wall. 759, 18 L. Ed. 879; United States v. Athens Armory, 2 Abb. U. S. 129, Fed. Cas. No. 14,473. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[128] In re Quartz Hill Co., L. R. 21 Ch. Div. 642. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[129] Robinson v. Varnell, 16 Tex. 382. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

ered it impossible that the legislature could have meant to use it in this sense, as common-law outlawry was unknown in the state and could not be pronounced by an act of the legislature. But looking at the condition of the country at the time the act was passed, and considering another statute designed to remedy the same evil, they concluded that the word should be taken in a more popular sense, and as denoting a desperado or lawless person accustomed to go about in disguise working violence and outrage.[130]

TECHNICAL LEGAL TERMS

64. Words and phrases which are used only in the law and have a precise legal meaning, and also terms used more or less in common speech but which have acquired a peculiar and appropriate meaning in the law, or which bear a definite signification at common law, are to be understood in their proper technical sense, unless it plainly appears that they were not so used by the legislature.

The technical terms and phrases of the law, when found in a statute, must be taken in their proper technical signification, unless there is something in the context to show that they were intended to bear a different meaning.[131] Especially on subjects relating to courts and legal process, the legislatures are to be considered as speaking technically,

[130] Dale County v. Gunter, 46 Ala. 118. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[131] Laird v. Briggs, L. R. 19 Ch. Div. 22; Lisbon School Dist. No. 1 v. Landaff Town School Dist., 75 N. H. 324, 74 Atl. 186; Loewy v. Gordon, 129 App. Div. 459, 114 N. Y. Supp. 211; Wyatt v. State Board of Equalization, 74 N. H. 552, 70 Atl. 387; Sharpe v. Hasey, 134 Wis. 618, 114 N. W. 1118; Vann v. Edwards, 135 N. C. 661, 47 S. E. 784, 67 L. R. A. 461; Clarkson v. Hatton, 143 Mo. 47, 44 S. W. 761, 39 L. R. A. 748, 65 Am. St. Rep. 635. No particular words are necessary in a statute to create a condition precedent or a condition subsequent; but as conditions are not favored, they will not be presumed, where there is any doubt. Arnold v. Village of North Tarrytown, 137 App. Div. 68, 122 N. Y. Supp. 92. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

unless, from the statute itself, it appears that they used the terms in a more popular sense.[132] Where a word or phrase has a clear, definite, and settled meaning at common law, it is to have the same meaning in the construction of a statute in which it is found, unless it is plainly apparent that such was not the legislative intention.[133] And when an act of Congress uses a technical term, which is known, and its meaning clearly ascertained, by the common or the civil law, from one or the other of which it is obviously borrowed, it is proper to refer to the source from which it is taken, for its meaning.[134]

A few illustrations will help to make plain the application of these principles. "Land," for instance, is a technical term of the law, and when it is used in a statute, it is to be given its accepted legal meaning, unless restrained by the context. Hence, when a statute grants to a railroad company the right to appropriate "land" for its uses, this includes the right to remove a dwelling house.[135] The term "property," as applied to lands, includes every species of title, inchoate and complete, and it embraces those rights

[132] President, etc., of Merchants' Bank v. Cook, 4 Pick. (Mass.) 405. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[133] Fort v. City of Brinkley, 87 Ark. 400, 112 S. W. 1084; Mayo v. Wilson, 1 N. H. 53; Walton v. State, 62 Ala. 197; Apple v. Apple, 1 Head (Tenn.) 348; State ex rel. Williams v. Purl, 228 Mo. 1, 128 S. W. 196; Adams v. Turrentine, 30 N. C. 147; McCool v. Smith, 1 Black, 459, 17 L. Ed. 218; Buckner v. Real Estate Bank, 5 Ark. 536, 41 Am. Dec. 105; State v. Engle, 21 N. J. Law, 347. Some of the terms to which this rule was applied, in the cases cited, were "negligent escape," "next of kin," and "heir." *See "Statutes," Dec. Dig. (Key No.) §§ 192, 222; Cent. Dig. §§ 266, 270, 301.*

[134] United States v. Jones, 3 Wash. C. C. 209, Fed. Cas. No. 15,494. *See "Statutes," Dec. Dig. (Key No.) §§ 192, 222, 225¾; Cent. Dig. §§ 266, 270, 301, 306.*

[135] Brocket v. Ohio & Pa. R. Co., 14 Pa. 241, 53 Am. Dec. 534. And see Chicago, I. & K. R. Co. v. Knuffke, 36 Kan. 367, 13 Pac. 582; Bulkley v. Wilford, 8 Dowl. & R. 549; People ex rel. International Nav. Co. v. Barker, 153 N. Y. 98, 47 N. E. 46; Union Cent. L. Ins. Co. v. Tillery, 152 Mo. 421, 54 S. W. 220, 75 Am. St. Rep. 480; Crawford v. Hathaway, 67 Neb. 325, 93 N. W. 781, 60 L. R. A. 889, 108 Am. St. Rep. 647. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

which lie in contract, executory as well as executed.[136] Again, the word "murder" connotes the idea of premeditation or malice aforethought.[137] And the word "willful," when used in a statute creating a criminal offense, implies the doing of the act purposely and deliberately, in violation of law.[138] "Purchaser" has a well-defined technical signification, and embraces every holder of the legal title to real or personal property, where such title has been acquired by deed, including a mortgagee.[139] So again, "due process of law" requires that a party shall be properly brought into court, and when there, shall have the right to set up any lawful defense to any proceeding against him.[140] Where criminal prosecutions, under a statute, are to be instituted "on complaint," a complaint under oath or affirmation is implied, as a part of the technical meaning of the term.[141] In a statute of distribution, the words, "the ancestor from

[136] Figg v. Snook, 9 Ind. 202. And see Lawrence v. Hennessey, 165 Mo. 659, 65 S. W. 717; People v. Common Council, 70 Mich. 534, 38 N. W. 470; Ætna Fire Ins. Co. v. Tyler, 16 Wend. (N. Y.) 385, 30 Am. Dec. 90; Cooney v. Lincoln, 20 R. I. 183, 37 Atl. 1031. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 263, 270; "Property," Cent. Dig. § 1.*

[137] State v. Phelps, 24 La. Ann. 493. And see State v. Miller, 9 Houst. (Del.) 564, 32 Atl. 137; McMillan v. State, 35 Ga. 54. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[138] State v. Whitener, 93 N. C. 590. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[139] Halbert v. McCulloch, 3 Metc. (Ky.) 456, 79 Am. Dec. 556. "In the construction of registry acts, the term 'purchaser' is usually taken in its technical legal sense. It means a complete purchaser, or, in other words, a purchaser clothed with the legal title." Steele v. Spencer, 1 Pet. 552, 7 L. Ed. 259. See Riddle v. Hall, 99 Pa. 116; Larned v. Donovan, 84 Hun, 533, 32 N. Y. Supp. 731; Jones v. Light, 86 Me. 437, 30 Atl. 71; In re Gill's Estate, 79 Iowa, 296, 44 N. W. 553, 9 L. R. A. 126. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[140] Wright v. Cradlebaugh, 3 Nev. 341; Stuart v. Palmer, 74 N. Y. 183, 30 Am. Rep. 289; Bank of Columbia v. Okely, 4 Wheat. 235, 4 L. Ed. 559; Leeper v. Texas, 139 U. S. 462, 11 Sup. Ct. 577, 35 L. Ed. 225; Barber Asphalt Pav. Co. v. Ridge, 169 Mo. 376, 68 S. W. 1043; Taylor v. Porter, 4 Hill (N. Y.) 140, 40 Am. Dec. 274. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[141] Campbell v. Thompson, 16 Me. 117. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

whom the estate came," designate the last ancestor from whom it came.[142] Again, the word "crime," in its popular sense, means a criminal offense of a deeper or more heinous description, while smaller faults are designated as "misdemeanors." But "crime," as a legal term, includes both felonies and misdemeanors. Hence, where a statute provided that any person brought before a justice of the peace on a charge of having "committed a crime" should not be required to pay the costs where the charge should appear to be unfounded, it was held that the word, in this connection, included any felony or misdemeanor within the jurisdiction of a justice.[143] But it is said that the word "grant" is not a technical term like "enfeoff"; it may import a grant of a naked power, as well as of an interest or title.[144]

Some other legal terms which are held to have a definite technical meaning, and hence must be understood in that meaning unless the contrary plainly appears, are "convey," [145] "false" or "falsely," [146] and "knowing" or "knowingly." [147] But the word "void," as used in statutes, is an extremely ambiguous word, and its meaning may range from absolute nullity to that which is merely liable to be avoided under certain conditions. Hence there is no absolute rule for determining its signification, but its intended meaning must be gathered from the context, the subject-matter, and the object and purpose of the act in which it

[142] Clayton v. Drake, 17 Ohio St. 367. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[143] County of Lehigh v. Schock, 113 Pa. 373, 7 Atl. 52; Kentucky v. Dennison, 24 How. 66, 16 L. Ed. 717; State v. Blitz, 171 Mo. 530, 71 S. W. 1027; Ex parte Reggel, 114 U. S. 642, 5 Sup. Ct. 1148, 29 L. Ed. 250; State v. Sauer, 42 Minn. 258, 44 N. W. 115. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[144] Rice v. Minnesota & N. W. R. Co., 1 Black, 358, 17 L. Ed. 147. And see Seale v. Ford, 29 Cal. 104; Lambert v. Smith, 9 Or. 185. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[145] Booker v. Castillo, 154 Cal. 672, 98 Pac. 1067. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[146] United States v. Ninety-Nine Diamonds, 139 Fed. 961, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[147] State v. McBarron, 66 N. J. Law, 680, 51 Atl. 146. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

occurs.[148] Again, there are some terms which have a precise, but limited, significance in law when used with strict propriety, but which are often extended to a much wider scope. Such, for instance, is the word "descent," which is properly applied only to the devolution of real estate, but is sometimes used so as to include personal property also, or personal property alone.[149]

Finally, there are numerous terms often used in the courts and in legal documents and proceedings which have no such peculiar technical meaning as to bring them within this rule, but which are to be interpreted according to the ordinary rules of construction like ordinary phrases. Such, it is said, is the word "agent," [150] and so, also, is the term "appeal." [151] And it has been ruled that the phrase "passenger train" has no technical meaning in law, and is to be construed in its ordinary sense.[152]

WORDS JUDICIALLY DEFINED

65. Words and phrases in a statute which have received a settled judicial construction before its enactment are to be understood according to that construction, unless the statute clearly requires them to bear a different meaning.

This rule may be supposed to grow out of the fact that the courts are the authoritative interpreters of statutes, and

[148] Hogan v. Akin, 181 Ill. 448, 55 N. E. 137; Arnold v. Richmond Iron Works, 1 Gray (Mass.) 434; Green v. Kemp, 13 Mass. 515, 7 Am. Dec. 169; Smith v. Saxton, 6 Pick. (Mass.) 487; Commonwealth v. Weiher, 3 Metc. (Mass.) 448. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[149] Rountree v. Pursell, 11 Ind. App. 522, 39 N. E. 747; Horner v. Webster, 33 N. J. Law, 387; Adams v. Akerlund, 168 Ill. 632, 48 N. E. 454. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[150] Lamb v. State, 49 Tex. Cr. R. 442, 93 S. W. 734. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[151] Nash v. City of Glen Elder, 74 Kan. 756, 88 Pac. 62. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

[152] State v. Missouri Pac. Ry. Co., 219 Mo. 156, 117 S. W. 1173. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. §§ 266, 270.*

that it is a settled principle with the courts to adhere to their own former decisions, unless very thoroughly satisfied of their incorrectness, and this in matters of construction and interpretation as well as in matters of general law. Therefore, when particular words or phrases have received a fixed and consistent judicial interpretation, it must be presumed that a legislative body, using such terms in its enactment, is aware of the construction already placed upon them and expects that that construction will be adhered to. Hence they are to be understood in the sense thus previously given to them, unless an intention of the legislature to have them understood in a different sense is unmistakably indicated,[153] notwithstanding the fact that the popular conception of their meaning may be something entirely different.[154] Thus, where Congress adopts or creates a common-law offense, and, in so doing, uses terms which have acquired a well-understood meaning by judicial interpretation, the presumption is that the terms were used in that sense, and courts may properly look to prior decisions, interpreting them, for the meaning of the terms and the definition of the offense, when there is no other definition in the act.[155]

COMMMERCIAL AND TRADE TERMS

66. Words of commerce or trade, in a tariff law or other statute relating to those subjects, are to be taken in their accepted commercial or trade signification; and if it is shown that they bore a definite, uni-

[153] State v. Jones, 91 Ark. 5, 120 S. W. 154; Board of School Com'rs of Indianapolis v. Wasson, 74 Ind. 133; McJunkins v. State, 10 Ind. 140; McKee v. McKee's Adm'rs, 17 Md. 352. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 192; Cent. Dig. §§ 266, 267, 270, 276.*

[154] Nephi Plaster & Mfg. Co. v. Juab County, 33 Utah, 114, 93 Pac. 53, 14 L. R. A. (N. S.) 1043. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 192; Cent. Dig. §§ 266–280.*

[155] United States v. Trans-Missouri Freight Ass'n, 58 Fed. 58, 7 C. C. A. 15, 24 L. R. A. 73. And see United States v. De Groat (D. C.) 30 Fed. 764; Smith v. Alabama, 124 U. S. 465, 8 Sup. Ct. 564, 31 L. Ed. 508. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 192; Cent. Dig. §§ 266–280.*

form, and generally accepted meaning in the trade and commerce of the country, at the date of the passage of the act, different from their meaning in common speech, it will be presumed that they were used by the legislature in that special sense, and they will be so interpreted, without regard to the scientific accuracy of such use of them and without regard to the extent of its divergence from the ordinary or popular meaning.

It is said in a few of the reported decisions that if words used in a tariff act to designate particular kinds or classes of goods have a well-known signification in trade and commerce, different from their ordinary meaning, the special meaning is to prevail, unless Congress has clearly manifested a contrary intention, and it is only when no commercial meaning is called for or proved that the common meaning of the words is to be adopted.[156] But these cases are contrary to the general and now prevalent current of decisions. The accepted rule is that the language of such statutes will primarily be understood to have the same meaning in commerce that it has in the community at large, unless the contrary is shown, and consequently, before the common and ordinary meaning of the words of the act can be departed from, it must be clearly shown that they bear a special trade meaning which is not coextensive with that given to them in the speech of the people.[157] And the party in interest, who claims that the particular word or term has a special and peculiar trade meaning, must present evidence to that effect and establish his claim by a fair preponder-

[156] Cadwalader v. Zeh, 151 U. S. 171, 14 Sup. Ct. 288, 38 L. Ed. 115; Hedden v. Richard, 149 U. S. 346, 13 Sup. Ct. 891, 37 L. Ed. 763. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[157] Schmeider v. Barney, 113 U. S. 645, 5 Sup. Ct. 624, 28 L. Ed. 1130; Swan v. Arthur, 103 U. S. 597, 26 L. Ed. 525; Saltonstall v. Wiebusch & Hilger, 156 U. S. 601, 15 Sup. Ct. 476, 39 L. Ed. 549; Weilbacher v. Merritt (C. C.) 37 Fed. 85; Kennedy v. Hartranft (C. C.) 9 Fed. 18. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

ance of proof.[158] But when it appears that terms or phrases in the statute belong exclusively to the vocabulary of merchants and traders, or that, as used in the commerce and trade of the country, they bore, at the time of the passage of the law, a special signification, different from their meaning in ordinary speech, and well settled and understood in the home markets, it will be presumed that Congress used them in that special meaning and no other, and they will be interpreted accordingly.[159]

In these circumstances, the propriety, accuracy, or scientific correctness of the name by which the particular article is known in commerce is of no importance and is not a proper subject of inquiry. The determining element is the fact that it is known by such or such a name among mer-

[158] Weilbacher v. Merritt (C. C.) 37 Fed. 85; Kennedy v. Hartranft (C. C.) 9 Fed. 18; Zeh v. Cadwalader (C. C.) 42 Fed. 525; Claflin v. Robertson (C. C.) 38 Fed. 92. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[159] Two Hundred Chests of Tea, 9 Wheat. 430, 6 L. Ed. 128; Barlow v. United States, 7 Pet. 404, 8 L. Ed. 728; Elliott v. Swartwout, 10 Pet. 137, 9 L. Ed. 373; Stuart v. Maxwell, 16 How. 150, 14 L. Ed. 883; Arthur v. Cumming, 91 U. S. 362, 23 L. Ed. 438; Arthur v. Morrison, 96 U. S. 108, 24 L. Ed. 764; Arthur v. Lahey, 96 U. S. 112, 24 L. Ed. 766; Greenleaf v. Goodrich, 101 U. S. 278, 25 L. Ed. 845; Recknagel v. Murphy, 102 U. S. 197, 26 L. Ed. 130; Barber v. Schell, 107 U. S. 617, 2 Sup. Ct. 301, 27 L. Ed. 490; Arthur v. Butterfield, 125 U. S. 70, 8 Sup. Ct. 714, 31 L. Ed. 643; Robertson v. Salomon, 130 U. S. 412, 9 Sup. Ct. 559, 32 L. Ed. 995; Pickhardt v. Merritt, 132 U. S. 252, 10 Sup. Ct. 80, 33 L. Ed. 353; Toplitz v. Hedden, 146 U. S. 252, 13 Sup. Ct. 70, 36 L. Ed. 961; Patton v. United States, 159 U. S. 500, 16 Sup. Ct. 89, 40 L. Ed. 233; Erhardt v. Ullman, 51 Fed. 414, 2 C. C. A. 319; Junge v. Hedden (C. C.) 37 Fed. 197; McCoy v. Hedden (C. C.) 38 Fed. 89; In re Kursheedt Mfg. Co., 54 Fed. 159, 4 C. C. A. 262; Lamb v. Robertson (C. C.) 38 Fed. 716; United States v. Semmer (C. C.) 41 Fed. 324; Fox v. Cadwalader (C. C.) 42 Fed. 209; Dodge v. Hedden (C. C.) 42 Fed. 446; In re Irwin (C. C.) 62 Fed. 150; Bacon v. Bancroft, 1 Story, 341, Fed. Cas. No. 714; Lee v. Lincoln, 1 Story, 610, Fed. Cas. No. 8,195; United States v. Breed, 1 Sumn. 159, Fed. Cas. No. 14,638; United States v. Eighty-Five Hogsheads of Sugar, 2 Paine, 54 Fed. Cas. No. 15,037; Morrison v. Arthur, 13 Blatchf. 194, Fed. Cas. No. 9,842. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

chants and traders, the law being made for practical application to commercial transactions. Congress "did not suppose our merchants to be naturalists or geologists or botanists," and articles which they would describe and name as belonging to a particular class will be held included in it, although scientific men, speaking with scientific accuracy, would reject such a classification.[160] Further, in the construction of these laws, the vocabulary of merchants is to be adopted in preference to that of mechanics.[161] And in fixing the classification of goods for the payment of duties, their denomination in the market when the law was passed will control, without regard to the material of which they may be composed or the use to which they may be destined or applied.[162] Thus, where an article has been advanced through one or more processes into a completed commercial article, known and recognized in trade by a specific and distinctive name, other than the name of the material of which it is composed, and is put into a completed shape, designed and adapted for a particular use, it is deemed to be a "manufacture." [163] A word used in a tariff

[160] Kwong Yuen Shing v. United States (C. C.) 175 Fed. 317; Two Hundred Chests of Tea, 9 Wheat. 430, 6 L. Ed. 128; United States v. One Hundred and Twelve Casks of Sugar, 8 Pet. 277, 8 L. Ed. 944. The popular meaning of a word must control when it is diametrically opposed to the scientific designation. Thus, "saccharine," which is very much sweeter than sugar, is not to be classed as an "acid," although it may have an acid reaction and is classed by scientists as an "acid anhydrid." Lutz v. Magone, 153 U. S. 105, 14 Sup. Ct. 777, 38 L. Ed. 651. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[161] United States v. Sarchet, Gilp. 273, Fed. Cas. No. 16,224. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[162] American Net & Twine Co. v. Worthington, 141 U. S. 468, 12 Sup. Ct. 55, 35 L. Ed. 821. And see May v. Simmons (C. C.) 4 Fed. 499; Schmeider v. Barney (C. C.) 6 Fed. 150; Weilbacher v. Merritt (C. C.) 37 Fed. 85. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[163] Hartranft v. Wiegmann, 121 U. S. 609, 7 Sup. Ct. 1240, 30 L. Ed. 1012; Erhardt v. Hahn, 55 Fed. 273, 5 C. C. A. 99; Schriefer v. Wood, 5 Blatchf. 215, Fed. Cas. No. 12,481; Stockwell v. United

act may be susceptible of a trade meaning as designating a special group of articles, although each article in the group is always bought and sold by its specific name, whereby it happens that no articles are bought and sold by the group designation.[164] And it is to be observed that the phrase "of similar description," frequently found in tariff acts following a specific enumeration of several articles of the same kind or class, is not a commercial term in any such sense that its meaning or application in the particular case must be determined by the understanding of merchants.[165]

A commercial designation of an article, such as will control the meaning of a term used in a revenue law, must be definite and precise, uniform, and of general acceptance, not partial, local, or personal. Such a law is made with reference to the trade and commerce of the whole country, and its terms cannot be supposed to have been employed in a sense which is only locally known, or known and used only by some individuals or by a particular branch of a general trade.[166] The special use of the term must be shown to be known to and accepted by those who regularly follow the particular business, and cannot ordinarily be made out by the testimony of a single merchant, speaking only of his own usage.[167] Further the special use must be that which prevails in the trade in this country; the name or

States, 3 Cliff. 284, Fed. Cas. No. 13,466. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[164] In re Herrman (C. C.) 52 Fed. 941. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[165] Greenleaf v. Goodrich, 101 U. S. 278, 25 L. Ed. 845. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[166] Maddock v. Magone, 152 U. S. 368, 14 Sup. Ct. 588, 38 L. Ed. 482; Sonn v. Magone, 159 U. S. 417, 16 Sup. Ct. 67, 40 L. Ed. 203. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[167] Dodge v. Hedden (C. C.) 42 Fed. 446; Lamb v. Robertson (C. C.) 38 Fed. 716; Berbecker v. Robertson, 152 U. S. 373, 14 Sup. Ct. 590, 38 L. Ed. 484. But see Erhardt v. Ballin, 55 Fed. 968, 5 C. C. A. 363. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

designation which the article may bear in foreign markets is of no importance.[168]

It is also considered an essential part of the rule, as settled by the courts, that the classification of goods under the tariff laws is to be determined by the names or designations which they bore at the date of the passage of the act, and evidence of their description or use since that time, or of the purpose for which they are now imported, is not admissible.[169] At the same time it is held that the mere fact that, at the time of the enactment of the law, articles of a particular kind were not known in commerce or goods of a particular kind had not begun to be manufactured, cannot withdraw them from the class to which they belong, as described in the statute, when its language fairly and clearly includes them.[170]

Although ordinarily interpretation is the office of the court, and not of the jury, yet when there is evidence in a case that the term in question has a special or peculiar meaning according to the usage of trade and commerce, it is for the jury to determine as a matter of fact what that meaning is, and whether the imported article is or is not known in commerce by the word or term used in the tariff act.[171] The commercial designation of an article is not a matter of which a court can take judicial notice.[172]

[168] Lamb v. Robertson (C. C.) 38 Fed. 716; Barlow v. United States, 7 Pet. 404, 8 L. Ed. 728. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[169] Lawrence Johnson & Co. v. United States, 166 Fed. 728, 92 C. C. A. 418; Dennison Mfg. Co. v. United States, 72 Fed. 258, 18 C. C. A. 543; Rossman v. Hedden, 145 U. S. 561, 12 Sup. Ct. 925, 36 L. Ed. 817; Curtis v. Martin, 3 How. 106, 11 L. Ed. 516. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[170] Pickhardt v. Merritt, 132 U. S. 252, 10 Sup. Ct. 80, 33 L. Ed. 353; Newman v. Arthur, 109 U. S. 132, 3 Sup. Ct. 88, 27 L. Ed. 883; In re Van Blankensteyn, 56 Fed. 474, 5 C. C. A. 579. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[171] Marvel v. Merritt, 116 U. S. 11, 6 Sup. Ct. 207, 29 L. Ed. 550; Weilbacher v. Merritt (C. C.) 37 Fed. 85; Nix v. Hedden (C. C.) 39

[172] See note 172 on following page.

But the application of this rule cannot override the plain and evident meaning of Congress. Although it may appear that the word in question has a special and peculiar trade meaning, yet if the context shows that such technical meaning could not have been the one which Congress placed upon the word, such technical trade meaning cannot be adopted by the court in construing the statute.[173] So, also, when Congress has so described an article in a tariff act as to identify it by a given designation for revenue purposes, and this has been so long continued as to impress on it a particular designation as an article of import, it must be treated as a distinct article, whether or not it is so known in commerce.[174] And again, it has been held that the commercial name of an article should not settle its classification when that name does not truly describe it, while there is another term used in the same statute under which it properly falls.[175]

Fed. 109; State v. Baldwin, 36 Kan. 1, 12 Pac. 318; Moran v. Prather, 23 Wall. 492, 23 L. Ed. 121; Nix v. Hedden, 149 U. S. 304, 13 Sup. Ct. 881, 37 L. Ed. 745; Sonn v. Magone, 159 U. S. 417, 16 Sup. Ct. 67, 40 L. Ed. 203; Saltonstall v. Wiebusch & Hilger, 156 U. S. 601, 15 Sup. Ct. 476, 39 L. Ed. 549; Tyng v. Grinnell, 92 U. S. 467, 23 L. Ed. 733; Baumgarten v. Magone (C. C.) 50 Fed. 69; Robertson v. Salomon, 144 U. S. 603, 12 Sup. Ct. 752, 36 L. Ed. 560; Bogle v. Magone, 152 U. S. 623, 14 Sup. Ct. 718, 38 L. Ed. 574. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[172] Seeberger v. Schlesinger, 152 U. S. 581, 14 Sup. Ct. 729, 38 L. Ed. 560. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[173] In re Salomon (C. C.) 48 Fed. 287; Roosevelt v. Maxwell, 3 Blatchf. 391, Fed. Cas. No. 12,034. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[174] De Forest v. Lawrence, 13 How. 274, 14 L. Ed. 143. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

[175] Goldberg v. United States, 61 Fed. 91, 9 C. C. A. 380. *See "Statutes," Dec. Dig. (Key No.) § 192; Cent. Dig. § 270; "Customs Duties," Dec. Dig. (Key No.) §§ 16–20; Cent. Dig. §§ 13–16.*

ASSOCIATED WORDS

67. Associated words explain and limit each other. When a word used in a statute is ambiguous or vague, its meaning may be made clear and specific by considering the company in which it is found and the meaning of the terms which are associated with it.

It is an ancient and fundamental rule in the construction of statutes that the meaning of a doubful word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated, and that, where several things are referred to, they are presumed to be of the same class, when connected by a copulative conjunction, unless a contrary intent plainly appears.[176]

This rule is analogous to that which requires the words of a statute to be construed with reference to the subject-matter of the act, but is not identical with it. That rule directs us to seek the exact meaning of a doubtful word or phrase by a consideration of the tenor of the whole law and the object and purpose of the legislature in enacting it; but the present rule is rather one of verbal criticism, and applies to the case of several terms grouped together and mutually qualifying each other. It is expressed in the maxim "noscitur a sociis." [177] To illustrate, an English act required licenses for "houses, rooms, shops, or buildings, kept open for public refreshment, resort, and entertainment." It was adjudged that the word "entertainment," in this connection, did not necessarily mean a concert, dramatic performance, or other divertisement, nor did it necessarily imply the furnishing of food or drink, but that, judged from its associations, it meant the reception and ac-

[176] Gates & Son Co. v. City of Richmond, 103 Va. 702, 49 S. E. 965; Brown v. Chicago & N. W. Ry. Co., 102 Wis. 137, 78 N. W. 771, 44 L. R. A. 579; Carson & Co. v. Shelton, 128 Ky. 329, 107 S. W. 793, 32 Ky. Law Rep. 1083, 15 L. R. A. (N. S.) 509. *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

[177] Broom, Max. 588; Bear v. Marx, 63 Tex. 298. *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

commodation of the public.[178] So where a policy of marine insurance is specified to protect the assured against "arrests, restraints, and detainments of all kings, princes, and people," the word "people" means the ruling or governing power of the country, this signification being impressed upon it by its association with the words "kings" and "princes."[179] Again, in a statute relating to imprisonment for debt, which speaks of debtors who shall be charged with "fraud, or undue preference to one creditor to the prejudice of another," the word "undue" means fraudulent.[180] A statute of bankruptcy, declaring that any fraudulent "gift, transfer or delivery" of property shall constitute an act of bankruptcy, applies only to such deliveries as are in the nature of a gift—such as change the ownership of the property, to the prejudice of creditors; it does not include a delivery to a bailee for safe-keeping.[181] So also, the term "proceeding," in a statute which declares that "no action or proceeding," commenced before its adoption, shall be affected by its provisions, does not include a judgment, for that is an entire act and cannot, in any proper sense, be said to be "commenced" before a certain day.[182] On the same principle, the language of an act conferring equity jurisdiction in "all cases of trust arising under deeds, wills, or in the settlement of estates," applies only to express trusts arising from the written contracts of the deceased, not to those implied by law, or growing out of the official situation of an executor or administrator.[183]

[178] Muir v. Keay, L. R. 10 Q. B. 594. *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

[179] Nesbitt v. Lushington, 4 Durn. & E. 783. And see The Itata, 56 Fed. 505, 5 C. C. A. 608; United States v. Quincy, 6 Pet. 445, 8 L. Ed. 458; United States v. Trumbull (D. C.) 48 Fed. 99. *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

[180] Bulwinkle v. Grube, 5 Rich. Law (S. C.) 286. *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

[181] Cotton v. James, Mood. & M. 273. *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

[182] Daily v. Burke, 28 Ala. 328. *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

[183] Given v. Simpson, 5 Greenl. (Me.) 303. The court said: "It is certainly very vague and indefinite language, but we must give it a

But this, like other rules of interpretation, is not to be applied arbitrarily. It does not mean that the plain and obvious meaning of a word, phrase, or designation is to be abandoned, and another signification assigned to it, in order to harmonize it with the associated words; but it is to be resorted to only in cases of doubt and used as an aid in discerning the intention of the legislature in cases where the particular word or phrase is ambiguous in itself or is equally susceptible of various meanings.[184]

GENERAL AND SPECIAL TERMS

68. General terms in a statute are to receive a general construction, unless restrained by the context or by plain inferences from the scope and purpose of the act.

69. General terms or provisions in a statute may be restrained and limited by specific terms or provisions with which they are associated.

70. Special terms in a statute may sometimes be expanded to a general signification by the consideration that the reason of the law is general.

General Terms Construed Generally

It is a well-recognized principle of statutory construction that general terms and expressions are primarily to be accorded their natural, full, and general significance. It is

reasonable construction. In cases somewhat similar, the rule of construction 'noscitur a sociis' is found useful and is consequently adopted. Now it is clear that the legislature begins by speaking of trusts created by those having the ownership or legal control of the property. Such is the case of trusts created by deeds or wills, and according to the before mentioned rule, it is reasonable to suppose that they intended, by the words 'or in the settlement of estates,' trusts created by the same authority." *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

[184] Brown v. Chicago & N. W. Ry. Co., 102 Wis. 137, 78 N. W. 771, 44 L. R. A. 579; Strohmeyer & Arpe Co. v. United States, 178 Fed. 268, 101 C. C. A. 400. *See "Statutes," Dec. Dig. (Key No.) § 193; Cent. Dig. § 271.*

only when the context, or some other admissible consideration, shows that the legislature intended to use them in a more limited sense, that their meaning can be restrained within narrower limits.[185] It is mentioned as an illustration of the force of the rule that general terms are to be understood in their full extent, unless thus restrained, that the statute of wills (St. 32 Hen. VIII, c. 1) having authorized "all and every person or persons" to devise their lands, it was feared that it might enable infants and insane persons to do so, and consequently the St. 34 Hen. VIII, c. 5, § 14, was passed to introduce these exceptions.[186] Power given by the legislature to purchase "any property" for a designated purpose will, on this principle, include real as well as personal property.[187]

But general terms are to receive such a reasonable interpretation as will leave the other provisions of the statute in practical operation and effect.[188] And they are often to be restrained by considerations drawn from the subject-matter of the enactment and its general scope and design, the rule being to construe general provisions together in the light of the general objects and purposes of the enactment, and so as to give effect to the main intent.[189] And in this way, to arrive at the legislative intent, general words must often be restrained and limited to the fitness of the subject-matter.[190] Thus, it is said that the word "all" is fre-

[185] Torrance v. McDougald, 12 Ga. 526; Skeen v. Craig, 31 Utah, 20, 86 Pac. 487. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[186] Beckford v. Wade, 17 Ves. 88. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[187] De Witt v. City of San Francisco, 2 Cal. 289. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[188] Electro-Magnetic Mining & Development Co. v. Van Auken, 9 Colo. 204, 11 Pac. 80. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[189] People v. Harrison, 191 Ill. 257, 61 N. E. 99; Board of Com'rs of City and County of Denver v. Lunney, 46 Colo. 403, 104 Pac. 945. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[190] Board of Com'rs of City and County of Denver v. Lunney, 46 Colo. 403, 104 Pac. 945; State ex rel. Balch v. Fry, 186 Mo. 198, 85 S. W. 328. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

quently and carelessly used in all writings, lay as well as legal, and the generality of the term is often to be restrained in an act, not only by the context, but also by the general form and scheme of the statute, as indicative of the intention of the legislature.[191] So, again, a statute providing that any person who has been convicted of certain offenses shall be entitled "for any of the following causes" to a new trial or arrest of judgment should be construed as though the provision read "for any one of the following causes."[192] In particular, general terms or provisions

[191] Phillips v. State, 15 Ga. 518. And, see, People v. Hoffman, 37 N. Y. 9; Frazier v. Warfield, 13 Md. 279; State Bank of Missouri v. Tutt, 44 Mo. 366; Stone v. Elliott, 11 Ohio St. 252; State v. Townley, 18 N. J. Law, 311; Hare v. McIntire, 82 Me. 240, 19 Atl. 453, 8 L. R. A. 450, 17 Am. St. Rep. 476. A statute providing for the taxation of "all" property of a certain kind means only such as is within the jurisdiction of the state. Commonwealth v. Standard Oil Co., 101 Pa. 119. A law for the taxing of "all banks" may not include private banks and exchange brokers. Exchange Bank of Columbus v. Hines, 3 Ohio St. 1. "All bridges" may mean only such as are owned by bridge companies, not railroad bridges. Anderson v. Chicago, B. & Q. R. Co., 117 Ill. 26, 7 N. E. 129. A statute granting mechanics' liens on "all buildings" will not include public buildings unless expressly within the terms of the act. Atascosa County v. Angus, 83 Tex. 202, 18 S. W. 563, 29 Am. St. Rep. 637. The term "all cases" may be so restricted by the context as to mean criminal cases only. Jackson v. Reeves, 53 Ind. 231; State ex rel. Murphy v. Rising, 10 Nev. 97; Bennett v. State, 57 Wis. 69, 14 N. W. 912, 46 Am. Rep. 26. A statute imposing pecuniary liability in certain cases on "all the directors" of corporations may be so construed as to apply only to those chargeable with neglect of duty. Austin v. Berlin, 13 Colo. 198, 22 Pac. 433. The prohibition of "all labor or business" on Sunday does not include the making of a contract, the intention being to prohibit such work as disturbs religious observances. Holden v. O'Brien, 86 Minn. 297, 90 N. W. 531. A condition to observe "all ordinances" of a municipality does not include such as are ultra vires or void for any other reason. Gilham v. Wells, 64 Ga. 192. A constitutional provision for the admission to bail of "all persons" may not include prisoners already tried and convicted. Ex parte Voll, 41 Cal. 29; Ex parte Erwin, 7 Tex. App. 288; Ex parte Ezell, 40 Tex. 451, 19 Am. Rep. 32; State v. Ward, 9 N. C. 443; Ford v. State, 42 Neb. 418, 60 N. W. 960. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[192] Thurston v. State, 3 Cold. (Tenn.) 115. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

should be read in a limited and restricted sense when the construction of them according to their widest import would lead to injustice, oppression, injury to innocent persons, or absurd consequences.[193]

"Person" Including "Corporation"

The word "person" is a general or generic term. Hence, when used in a statute, it embraces not only natural persons but also artificial persons, such as private corporations, unless the context indicates that it was used in a more limited sense, or the subject-matter of the act leads to a different conclusion; that is to say, it applies to corporations in all circumstances where it can reasonably and logically so apply.[194] For example, a statute providing that "if any person shall convey any real estate, * * * and shall not at the time have the legal estate in such lands, but shall afterwards acquire the same, the legal or equitable title aft-

[193] Tsoi Sim v. United States, 116 Fed. 920, 54 C. C. A. 154; State ex rel. McPherson v. St. Louis & S. F. R. Co., 105 Mo. App. 207, 79 S. W. 714; South v. Solomon, 6 Munf. (Va.) 12. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. 272.*

[194] Home Ins. Co. v. New York, 134 U. S. 594, 10 Sup. Ct. 593, 33 L. Ed. 1025; Missouri Pac. Ry. Co. v. Mackey, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. Ed. 107; People v. Dederick, 161 N. Y. 195, 55 N. E. 927; City of Los Angeles v. Leavis, 119 Cal. 164, 51 Pac. 34; First Nat. Bank of Ceredo v. Huntington Distilling Co., 41 W. Va. 530, 23 S. E. 792, 56 Am. St. Rep. 878; Greenwich Ins. Co. v. Carroll (C. C.) 125 Fed. 121; McGarry v. Nicklin, 110 Ala. 559, 17 South. 726, 55 Am. St. Rep. 40; Enterprise Brewing Co. v. Grime, 173 Mass. 252, 53 N. E. 855; Segnitz v. Garden City Banking & Trust Co., 107 Wis. 171, 83 N. W. 327, 50 L. R. A. 327, 81 Am. St. Rep. 830; Union Pac. Ry. Co. v. De Busk, 12 Colo. 294, 20 Pac. 752, 3 L. R. A. 350, 13 Am. St. Rep. 221; Fleming v. Texas Loan Agency, 87 Tex. 238, 27 S. W. 126, 26 L. R. A. 250; Crafford v. Warwick County Sup'rs, 87 Va. 110, 12 S. E. 147, 10 L. R. A. 129; Planters' & Merchants' Bank of Mobile v. Andrews, 8 Port. (Ala.) 404; Trenton Banking Co. v. Haverstick, 11 N. J. Law, 171; United States v. Amedy, 11 Wheat. 392, 6 L. Ed. 502; Cary v. Marston, 56 Barb. (N. Y.) 27; In re Fox, 52 N. Y. 530, 11 Am. Rep. 751; Miller's Ex'r v. Commonwealth, 27 Grat. (Va.) 110; People v. Utica Ins. Co., 15 Johns. (N. Y.) 358, 8 Am. Dec. 243; Douglass v. Pacific Mail Steamship Co., 4 Cal. 304; Louisville & N. R. Co. v. Commonwealth, 1 Bush (Ky.) 250. Per contra, see School Directors v. Carlisle Bank, 8 Watts (Pa.) 289. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

erwards acquired shall immediately pass to the grantee," applies as well to corporations as to individuals.[195] So also, a statute giving a right of action for damages against any "person" whose wrongful act, neglect, or default shall cause the death of a human being, applies equally to corporations as to private persons.[196] But still there are many cases in which the legislature does not mean that the word "person" shall include corporations. This is always a question of intention; and the intention must be sought for and determined, in each case, by the aid of the context, the general scope and purpose of the act, and other pertinent considerations.[197] Very often the legislature, to preclude any uncertainty on this point, will incorporate in the statute an explicit declaration that it shall or shall not apply to bodies politic. Moreover, in some cases, the word "persons" could not be construed in this extensive sense without doing violence to language or defeating the purpose or intended effect of the act. For instance, where a statute provides that a certain number of persons may organize themselves into a corporation, it cannot be understood as including corporations; that is, it does not authorize corporations, to the

[195] Jones v. Green, 41 Ark. 363. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[196] Chase v. American Steamboat Co., 10 R. I. 79. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[197] In the case of Pharmaceutical Society v. London & P. S. Ass'n, L. R. 5 App. Cas. 857, Lord Selborne said: "There can be no question that the word 'person' may, and I should be disposed myself prima facie to say, does, in a public statute, include a person in law, that is, a corporation, as well as a natural person. But although that is a sense which the word will bear in law, and which, as I said, perhaps ought to be attributed to it in the construction of a statute, unless there should be any reason for a contrary construction, it is never to be forgotten that in its popular sense and ordinary use it does not extend so far. Statutes, like other documents, are constantly conceived according to the popular use of language, and it is certain that this word is often used in statutes in a sense in which it cannot be intended to extend to a corporation. That accounts for the frequent occurence in some statutes, in interpretation clauses, of an express declaration that it shall extend to a body politic or corporate." *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

prescribed number, to organize themselves into a new corporation distinct from themselves. The word "persons" here obviously means only natural persons—individuals capable of contract and association.[198]

General Terms Associated with Specific Terms

When the particular provisions of a statute indicate its object and purpose, general language will be confined to those alone, unless a more extended application is clearly intended.[199] Thus, where a statute includes both a particular and also a general enactment, which in its most comprehensive sense would include what is embraced in the particular one, the particular enactment must be given effect, and the general enactment must be taken to embrace only such cases within its general language as are not within the provisions of the particular enactment.[200] And if additional words of qualification are needed to harmonize a general and a prior special provision in the same statute, they should be added to the general provision rather than to the special one.[201] Again, where a general intention is expressed in a statute and also a particular intention which is incompatible therewith, the particular intention is to be given effect by construing it as creating an exception.[202]

[198] Factors' & Traders' Ins. Co. v. New Harbor Protection Co., 37 La. Ann. 233; Denny Hotel Co. v. Schram, 6 Wash. 134, 32 Pac. 1002, 36 Am. St. Rep. 130. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[199] United States v. Crawford, 6 Mackey (D. C.) 319; In re Rouse, Hazard & Co., 91 Fed. 96, 33 C. C. A. 356; Nance v. Southern Ry. Co., 149 N. C. 366, 63 S. E. 116; Dawson County v. Clark, 58 Neb. 756, 79 N. W. 822; Ex parte Tyler, 2 Okl. Cr. 455, 102 Pac. 716; King v. Armstrong, 9 Cal. App. 368, 99 Pac. 527. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[200] Sanford v. King, 19 S. D. 334, 103 N. W. 28; State ex rel. Donnelly v. Hobe, 106 Wis. 411, 82 N. W. 336. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[201] Rodgers v. United States, 185 U. S. 83, 22 Sup. Ct. 582, 46 L. Ed. 816. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[202] State v. Moore, 108 Md. 636, 71 Atl. 461; Brookings County v. Murphy, 23 S. D. 311, 121 N. W. 793; Nance v. Southern Ry. Co., 149 N. C. 366, 63 S. E. 116. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

So again, "when two words or expressions are coupled together, one of which generally includes the other, it is obvious that the more general term is used in a meaning excluding the specific one. Though the words 'cows,' 'sheep,' and 'horses,' for example, standing alone, comprehend heifers, lambs, and ponies, respectively, they would be understood as excluding them if the latter words were coupled with them. The word 'land,' which, in its ordinary legal acceptation, includes buildings standing upon it, is evidently used as excluding them, when it is coupled with the word 'buildings.'" [203] And again, when a legislative act contains two sets of provisions, one giving specific and precise directions to do a particular thing, and the other in general terms prohibiting certain acts which would, in the general sense of the words used, include the particular act before authorized, the general clause does not control or affect the specific enactment.[204] And when general terms are used, and the statute enumerates the particulars under a videlicet, this shows the intention of the legislature to limit the comprehensiveness of the general phraseology to the particulars enumerated and those of the same class or kind. Thus, an act of a state legislature laying a tax on all real estate, to wit, on various sorts of real estate specified by the act, and as such shown to be private property, does not include property of any sort of the United States within its territory.[205] General words in one clause of a statute may also be restrained, according to these principles, by the particular words in a subsequent clause of the same statute.[206]

[203] Maxwell, Interp. (2d Ed.) 396. See Stevenson v. Bachrach, 170 Ill. 253, 48 N. E. 327; Cincinnati College v. Yeatman, 30 Ohio St. 276; People ex rel. International Nav. Co. v. Barker, 153 N. Y. 98, 47 N. E. 46; Isham v. Morgan, 9 Conn. 374, 23 Am. Dec. 361. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[204] Bartlett v. Inhabitants of City of Trenton, 38 N. J. Law, 64. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[205] United States v. Weise, 2 Wall. Jr. 72, Fed. Cas. No. 16,659. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[206] City of Covington v. McNickle's Heirs, 18 B. Mon. (Ky.) 262; Felt v. Felt, 19 Wis. 193; State v. Goetze, 22 Wis. 363. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

Special Terms Expanded by Construction

"Quando verba statuti sunt specialia, ratio autem generalis, statutum generaliter est intelligendum;" [207] that is to say, when the words or expressions used in a statute are special, but the reason, or spirit, or purpose, of the law is general, it should be read as if correspondingly general expressions had been used. And accordingly, in order to give effect to the true intent of the legislature, words of narrow or special import may be expanded by construction so as to embrace the general purpose and effectuate it.[208] On this principle, the word "child," as used in statutes relating to the distribution of estates, and in remedial and beneficial statutes generally, may be taken to include grandchildren.[209]

GENERAL TERMS FOLLOWING SPECIAL TERMS

71. It is a general rule of statutory construction that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specificially mentioned. But this rule must be discarded where the legislative intention is plain to the contrary.

This rule is commonly called the "ejusdem generis" rule, because it teaches us that broad and comprehensive expres-

[207] Beawfage's Case, 10 Coke, 99b, 101b. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[208] Lewis v. Northern Pac. Ry. Co., 36 Mont. 207, 92 Pac. 469; Board of Com'rs of City and County of Denver v. Lunney, 46 Colo. 403, 104 Pac. 945. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[209] Appeal of Eshleman, 74 Pa. 42; American Ins. Co. v. Canter, 1 Pet. 511, 7 L. Ed. 242; Walton v. Cotton, 19 How. 355, 15 L. Ed. 658; Cutting v. Cutting (C. C.) 6 Fed. 259; Storey's Appeal, 83 Pa. 89; Succession of Vives, 35 La. Ann. 371; Beebe v. Estabrook, 79 N. Y. 246. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

sions in an act, such as "and all others," or "any others," are usually to be restricted to persons or things "of the same kind" or class with those specially named in the preceding words.[210] It is of very frequent use and application in the interpretation of statutes.

Illustrations and Applications

The rule of "ejusdem generis" is properly applied to a statute exempting from taxation certain enumerated kinds of property and "other articles," the general term being strictly confined to the similitude of those specially named.[211] So, also, the application of statutes relating to the licensing or taxing of certain occupations or pursuits,

[210] Albert v. Order of Chosen Friends (C. C.) 34 Fed. 721; Merchants' Nat. Bank of Baltimore v. United States, 42 Ct. Cl. 6; State ex rel. Means v. Chicago, R. I. & P. Ry. Co. (Ark.) 128 S. W. 555; Cutshaw v. City of Denver, 19 Colo. App. 341, 75 Pac. 22; Roberts v. Savannah, F. & W. R. Co., 75 Ga. 225; In re Swigert, 119 Ill. 83, 6 N. E. 469; Spalding v. People, 172 Ill. 40, 49 N. E. 993; Philips v. Christian County, 87 Ill. App. 481; Nichols v. State, 127 Ind. 406, 26 N. E. 839; Wiggins v. State, 172 Ind. 78, 87 N. E. 718; Pein v. Miznerr, 41 Ind. App. 255, 83 N. E. 784; Rohlf v. Kasemeier, 140 Iowa, 182, 118 N. W. 276, 23 L. R. A. (N. S.) 1284, 132 Am. St. Rep. 261; State v. Fontenot, 112 La. 628, 36 South. 630; Commonwealth v. De Jardin, 126 Mass. 46, 30 Am. Rep. 652; Brooks v. Cook, 44 Mich. 617, 7 N. W. 216, 38 Am. Rep. 282; McIntyre v. Ingraham, 35 Miss. 25; City of St. Louis v. Laughlin, 49 Mo. 559; State v. Dinnisse, 109 Mo. 434, 19 S. W. 92; Benton v. Benton, 63 N. H. 289, 56 Am. Rep. 512; Chegaray v. Mayor of New York, 13 N. Y. 220; Lantry v. Mede, 194 N. Y. 544, 87 N. E. 1121; Michel v. American Cent. Ins. Co., 17 App. Div. 87, 44 N. Y. Supp. 832; Lasche v. Dearing, 23 Misc. Rep. 722, 53 N. Y. Supp. 58; In re Tilden's Ex'rs, 98 N. Y. 434; Stemmer v. Scottish Union & Nat. Ins. Co., 33 Or. 65, 53 Pac. 498; Stone v. Stone, 1 R. I. 425; Ex parte Leland, 1 Nott & McC. (S. C.) 460; City of Lynchburg v. Norfolk & W. R. Co., 80 Va. 237, 56 Am. Rep. 592; Commonwealth v. Israel, 4 Leigh (Va.) 675; Townsend Gas & Electric Co. v. Hill, 24 Wash. 469, 64 Pac. 778; In re Hoss' Estate (Wash.) 109 Pac. 1071; Bevitt v. Crandall, 19 Wis. 581; King v. Manchester & S. Waterworks, 1 Barn. & C. 630; King v. Wallis, 5 Barn. & E. 375; Countess of Rothes v. Kirkcaldy Waterworks Com'rs, L. R. 7 App. Cas. 694. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[211] Greenville Ice & Coal Co. v. City of Greenville, 69 Miss. 86, 10 South. 574. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Taxation," Cent. Dig. § 385.*

or to the relations of employers and employés therein, or regulating the payment of wages or the liens of servants or operatives, should generally be restricted to trades and callings similar to those specially named, though the enumeration of specific kinds of business is followed by the general term "or other business."[212] A statute authorizing school officers to employ and pay "teachers, janitors, and other employés of the schools," does not empower them to retain and compensate an attorney at law.[213] A law relating to the levying of execution on the franchises of "turnpike or other corporations authorized to receive toll" does not include a telephone company, though its charges may in some sense be denominated "toll," since it is not of the same kind or class as turnpike companies.[214] A statute making provision for the transaction of judicial business in case of the "death, sickness, or other disability" of the proper judge, does not include a case where he is merely absent from the district or circuit, for the disability arising therefrom is not of like character with those enumerated.[215] A law prohibiting the exclusion of any persons on account of their color from "barber shops, eating houses, or other places of public resort" will be restricted to places of the same general character.[216] So where a statute gave certain property and

[212] Crowther v. Fidelity Ins. Trust & Safe Deposit Co., 85 Fed. 41, 29 C. C. A. 1; Appeal of Pardee, 100 Pa. 408; City of St. Joseph v. Porter, 29 Mo. App. 605; City of St. Louis v. Laughlin, 49 Mo. 559; Merriam v. Mullett, 2 Pa. Co. Ct. R. 360. But see Sproul v. Murray, 156 Pa. 293, 27 Atl. 302. *See "Statutes," Dec. Dig. (Key No.) §§ 114, 194; Cent. Dig. § 272.*

[213] Denman v. Webster (Cal.) 70 Pac. 1063. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Schools and School Districts," Dec. Dig. (Key No.) § 79.*

[214] Ripley v. Evans, 87 Mich. 217, 49 N. W. 504. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Corporations," Cent. Dig. § 2120.*

[215] Western Dredging & Improvement Co. v. Heldmaier, 111 Fed. 123, 49 C. C. A. 264. And see Turnipseed v. Hudson, 50 Miss. 429, 9 Am. Rep. 15. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Exceptions, Bill of," Dec. Dig. (Key No.) § 32.*

[216] Rhone v. Loomis, 74 Minn. 200, 77 N. W. 31. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Civil Rights," Dec. Dig. (Key No.) § 6.*

business rights to "any married woman whose husband, either from drunkenness, profligacy, or any other cause, shall neglect or refuse to provide for her," it was held that the words "any other cause" must be understood of causes ejusdem generis with those enumerated, and hence would not include mere poverty, sickness, intellectual inferiority, or physical inability of the husband, not caused by vice.[217] So a statute which gives to county supervisors the authority to remove superintendents of houses of correction from office "for incompetency, improper conduct, or other cause satisfactory to the board," must be construed as meaning "other cause" of the same general nature with those causes specified, that is, such cause as shows that it is improper that the incumbent should be retained in the office.[218] Again, this rule has been applied to a statute authorizing the correction of "clerical or other errors" in tax assessments; the words "clerical or other" refer to some error of form in the assessment roll, and not to an error of the assessors in making the assessment, nor any substantial error of judgment or of law.[219] And so, where a statute prohibited all persons from hauling on turnpike roads "any timber, stone, or other thing," unless upon wheeled carriages, it was held that the other things prohibited were of the same nature with timber and stone, that is, heavy and likely to injure the road if hauled otherwise than upon wheels, and that the act did not apply to the transportation of a quantity of straw.[220] In a statute exempting from the operation of a bankruptcy or insolvency law the household and kitchen furniture and "other articles and necessaries" of the bankrupt or insolvent, the general term does not in-

[217] Edson v. Hayden, 20 Wis. 682. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Husband and Wife," Cent. Dig. § 368.*

[218] State ex rel. Kennedy v. McGarry, 21 Wis. 496. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Counties," Cent. Dig. § 102.*

[219] Hermance v. Supervisors of Ulster County, 71 N. Y. 481. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[220] Radnorshire County Roads Board v. Evans, 3 Best & S. 400. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

clude things which are merely ornamental or merely contribute to his pleasure, amusement, or convenience.[221] Again, a statute relating to the navigation of the river Thames with "any wherry, lighter, or other craft," was held not to apply to a steam tug of 87 tons burden, employed in moving another vessel, because it was not ejusdem generis with wherries and lighters.[222] The laws of the United States provide that shares of stock in national banks may be taxed to the owner by the state at a rate not exceeding that assessed upon "other moneyed capital" in the hands of individual citizens of the state. It is held that the phrase quoted means such capital as, in its use, comes into competition with the business of national banks; that is, money employed in banking.[223]

Superior Not Classed with Inferior

There is an important branch of the foregoing rule which may be stated in the following terms: A statute which enumerates persons or things of an inferior rank, dignity, or importance, is not to be extended, by the addition of general words, to persons or things of a higher rank, dignity, or importance than the highest enumerated, if there are any of a lower species to which the general words can apply.[224] For example, a statute avoiding conveyances by masters and fellows of colleges, deans and chapters of cathedrals, parsons, vicars, and "others having any spiritual or ecclesiastical living," would not include bishops, because they are

221 In re Thiell, 4 Biss. 241, Fed. Cas. No. 13,882; In re Ludlow, 1 N. Y. Leg. Obs. 322, Fed. Cas. No. 8,599. *See "Statutes" Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Bankruptcy," Cent. Dig. § 660.*

222 Reed v. Ingham, 3 El. & Bl. 889. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

223 First Nat. Bank v. Chehalis County, 166 U. S. 440, 17 Sup. Ct. 629, 41 L. Ed. 1069; Mercantile Nat. Bank v. New York, 121 U. S. 138, 7 Sup. Ct. 826, 30 L. Ed. 895; Mechanics' Nat. Bank v. Baker, 65 N. J. Law, 549, 48 Atl. 582. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272; "Taxation," Dec. Dig. (Key No.) § 12.*

224 Woodworth v. Paine's Adm'rs, 1 Ill. 374; Bishop, Wr. Laws, § 246b; 1 Bl. Comm. 88. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

of a higher rank than any of those mentioned.[225] So again, St. 31 Hen. VIII, c. 43, discharged from the payment of tithes all lands which should come to the crown by the dissolution of monasteries or colleges, or by renouncing, relinquishing, forfeiture, giving up, or "by any other means." But it was held (in the same case) that the general words closing the enumeration could not be understood to include the vesting of lands in the crown by act of Parliament, "which is the highest manner of conveyance that can be"; they referred only to other inferior means of a nature similar to those specified. Again, a statute imposed certain duties on articles exported and imported at a certain harbor. Under the head of "metals," certain specified duties were imposed on copper, brass, pewter, tin, and "all other metals not enumerated." It was held that the latter words did not include gold and silver, the decision being based partly on the ground that, taking the words in their ordinary sense, these would not be included, because they are always spoken of either by name or as the "precious metals," and partly on the rule that general words following a particular enumeration should not be held to include things superior to those enumerated.[226] But while this rule will generally hold good, yet there are certain cases in which it cannot be followed, without violating the great fundamental principle that the intention of the legislature is always to be sought out and followed. If, for instance, all those things which are of an inferior degree or rank are specifically mentioned and enumerated, and there are still general words added, the latter must be applied to things of a higher degree or rank than those named, because, if this were not done, there would be nothing for the general words to operate upon, and this result must always be avoided, for it is not to be presumed that the legislature would add to the terms of its enactment words which could have no value or signifi-

[225] Archbishop of Canterbury's Case, 2 Coke, 46a. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[226] Casher v. Holmes, 2 B. & Ad. 592. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

cance.[227] Thus, it is a general rule that where, in a statute relating to the courts, one or more courts are named, and the words "and other courts" follow, those words must be taken as applying only to courts inferior to those named. But if the specific enumeration exhausts all the inferior courts, or if there are none lower than those named, the superior courts must necessarily be included in the general words, for otherwise those words would be entirely without effect.[228]

"Other Persons"

Where a statute grants a right, imposes a duty, or lays a prohibition on certain enumerated classes of persons—as, for instance, those following certain kinds of avocations, those filling certain described offices, or those acting in certain enumerated capacities—with the addition of the words "or other persons," the general rule it to restrict the scope of the general phrase to persons similarly situated or similarly occupied to those enumerated, and not to make it applicable to the whole world.[229] Thus, where a city is authorized by its charter to tax persons engaged in certain employments "and any other persons or employments which it may deem proper," these general words must be interpreted as applicable only to persons and employments similar to the enumerated classes, and consequently the city will have no power, under this clause, to tax a railroad corporation.[230] A statute regulating the business of issuing vouchers for goods by "any warehouseman, wharfinger, or other person," means only those who are engaged in a

[227] Ellis v. Murray, 28 Miss. 129. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[228] Chapman v. Woodruff, 34 Ga. 91. See Barbour v. City of Louisville, 83 Ky. 95. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[229] Sandiman v. Beach, 7 Barn. & C. 96; United States v. 1,150½ Pounds of Celluloid, 82 Fed. 627, 27 C. C. A. 231; State v. Krueger, 134 Mo. 262, 35 S. W. 604; City of St. Louis v. Laughlin, 49 Mo. 559. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[230] City of Lynchburg v. Norfolk & W. R. Co., 80 Va. 237, 56 Am. Rep. 592. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

similar business or who combine the occupation of a warehouseman or wharfinger with some other pursuit, such as shipping, milling, or manufacturing.[231] So the mechanic's lien laws, applying to mechanics, laborers, "and other persons," do not include an architect, but only persons who have performed work similar to that of mechanics or laborers.[232] A law forbidding "any tavern keeper or other person" to sell liquor on Sunday does not include the general public, but only persons whose business consists, wholly or partly, in the sale of such articles.[233] And a statute prohibiting "any tradesman, artificer, or other person" from engaging in his usual occupation on Sunday does not include a coachman or a farmer.[234] An ordinance relating to public buildings and regulating the appointment of "janitors, engineers, and other persons," will not include an inspector of buildings, since it will not reach officials of a higher class than those enumerated.[235] Again, statutes exempting from execution the tools, implements, and stock in trade of "any mechanic, miner, or other person" should not be restricted to artificers or craftsmen, but may embrace merchants and tradesmen.[236] On the same principle, the laws giving a right of action against liquor sellers to the wife, child, parent, husband, etc., "or any other person" who may be injured in person, property, or means of support by the consequent intoxication of him to whom the sale is made, are generally construed liberally, and held to give a right of action to a widow as well as a wife, and even

[231] Bucher v. Commonwealth, 103 Pa. 528. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[232] Raeder v. Bensberg, 6 Mo. App. 445. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[233] Jensen v. State, 60 Wis. 577, 19 N. W. 374. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[234] Cavan v. City of Brooklyn (City Ct. Brook.) 5 N. Y. Supp. 758. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[235] State ex rel. Bartraw v. Longfellow, 95 Mo. App. 660, 69 S. W. 596. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[236] Wicker v. Comstock, 52 Wis. 315, 9 N. W. 25; Martin v. Bond, 14 Colo. 466, 24 Pac. 326. But see Grimes v. Bryne, 2 Minn. 89 (Gil. 72); Guptil v. McFee, 9 Kan. 30. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

to an entire stranger (not a relative) who is so injured,[237] though a statute of this kind cannot be stretched by construction so far as to give to the intoxicated person himself a right of action against the seller for money stolen from him while drunk.[238]

But the restrictive interpretation, limiting the law to persons, offices, or trades like those enumerated, will not be used where the result would be contrary to the manifest purpose of the legislature. Thus, an old statute of Missouri made it a criminal offense for "any ferryman or other person" to convey a slave across the Mississippi river unless the slave had a permit. It was held that this applied to the captain of a steamboat, for "all persons whatever who do the act are guilty of the offense. Ferrymen are mentioned because they generally have the means in constant readiness to do the act. They were therefore more prominent in the eyes of the legislature than all other persons." [239]

"Other Property"

This phrase almost always means property of a kind or class similar to those species before enumerated.[240] If those varieties of property specially mentioned are all personalty, the general words will not make the statute applicable to real estate or chattels real.[241] Thus a statute

[237] Schneider v. Hosier, 21 Ohio St. 98; Hackett v. Smelsley, 77 Ill. 109; Roose v. Perkins, 9 Neb. 304, 2 N. W. 715, 31 Am. Rep. 409; Jackson v. Brookins, 5 Hun (N. Y.) 530; English v. Beard, 51 Ind. 489; Bodge v. Hughes, 53 N. H. 614; Flower v. Witkovsky, 69 Mich. 371, 37 N. W. 364; Aldrich v. Sager, 9 Hun. (N. Y.) 537; Brockway v. Patterson, 72 Mich. 122, 40 N. W. 192, 1 L. R. A. 708. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[238] Brooks v. Cook, 44 Mich. 617, 7 N. W. 216, 38 Am. Rep. 282. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[239] Russell v. Taylor, 4 Mo. 550. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[240] Wall v. Platt, 169 Mass. 398, 48 N. E. 270; State v. Black, 75 Wis. 490, 44 N. W. 635; People v. Cummings, 114 Cal. 437, 46 Pac. 284. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[241] Livermore v. Board of Chosen Freeholders of Camden County, 29 N. J. Law, 245; Brailey v. Inhabitants of Southborough, 6 Cush. (Mass.) 141; First Nat. Bank of Joliet v. Adam, 138 Ill. 483, 28 N. E. 955. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

authorized actions to be brought in the name of the state, to recover "money, funds, credits, and property" held by public corporations for public purposes and wrongfully converted or disposed of. It was held that an action to recover real property was not within the purview of the act; for the word "property," associated with the preceding words of specific description in the act, is to be construed as referring to property of the same general character.[242] So a statute giving treble damages for the carrying away or destruction of "wood, timber, lumber, hay, grass, or other personal property" is limited to such things as are produced by or grown upon the land.[243] And under a law providing that "whenever the exigencies of any army in the field are such as to make impressments of forage, articles of subsistence, or other property absolutely necessary, then such impressment may be made," it was held that this did not authorize the impressment of a hotel or a drug store for hospital purposes.[244] The laws giving a lien to mechanics and materialmen on buildings "and other improvements on land," or "other structures," are subject to the application of the rule under consideration, and will not be held to apply to the construction of a bridge,[245] or a railroad.[246] A statute relating to actions of replevin for "timber, lumber, coal, or other property severed from the realty," and giving a right of recovery notwithstanding the title to the land may be in dispute, applies only to articles which before the severance constituted a part of the freehold and the severance of which depreciates its value, and not growing

[242] People v. New York & M. B. Ry. Co., 84 N. Y. 565. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[243] Berg v. Baldwin, 31 Minn. 541, 18 N. W. 821. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[244] White v. Ivey, 34 Ga. 186. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[245] Eastern Arkansas Hedge Fence Co. v. Tanner, 67 Ark. 156, 53 S. W. 886. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[246] Pennsylvania Steel Co. v. J. E. Potts Salt & Lumber Co., 63 Fed. 11, 11 C. C. A. 11. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

crops.[247] So a statute relating to malicious mischief in the injury or destruction of "any other public or private property" relates only to inanimate property, and does not apply to the injury or killing of animals.[248]

But it is generally held, under the statutes giving a right of action against railroad companies for damages by fire communicated from their locomotives to "buildings or other property," that the scope of the law should not be limited to structures upon the land, similar to buildings, but should also include personal property, such as trees, crops, and fences.[249]

Penal and Criminal Statutes

The rule under consideration has a special and more stringent application in the interpretation of statutes imposing penalties or defining crimes and prescribing their punishment,[250] in view of the well-known principles that criminal offenses cannot be created by implication or inference, and that no one can be brought under the denunciation of such a law unless his case comes within its explicit terms, or within the absolutely clear intention of the act, as well as within the spirit of the law and the mischief intended to be remedied.[251] As an example of the application of the rule in the construction of penal statutes, we may cite the cases holding that a provision against the maintenance of faro banks, roulette tables, "and other gambling devices" must be limited to machines or contrivances of like nature,

[247] Renick v. Boyd, 99 Pa. 555, 44 Am. Rep. 124. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[248] Patton v. State, 93 Ga. 111, 19 S. E. 734, 24 L. R. A. 732. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[249] Grissell v. Housatonic R. Co., 54 Conn. 447, 9 Atl. 137, 1 Am. St. Rep. 138; Martin v. New York & N. E. R. Co., 62 Conn. 331, 25 Atl. 239. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[250] Ex parte Muckenfuss, 52 Tex. Cr. R. 467, 107 S. W. 1131. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[251] Withers v. Commonwealth, 109 Va. 837, 65 S. E. 16; Brown v. State, 137 Wis. 543, 119 N. W. 338; Mayor, etc., of City of Atlanta v. White, 33 Ga. 229; Verona Cent. Cheese Co. v. Murtaugh, 50 N. Y. 314; Shaw v. Clark, 49 Mich. 384, 13 N. W. 786, 43 Am. Rep. 474. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

and will not include ordinary dice, lotteries, policy shops, or shooting at a mark for a prize.[252] So, where the statutory definition of the crime of burglary includes breaking into a shop, store, booth, tent, warehouse, "or other building," the application of the rule of ejusdem generis teaches that the offense is not committed by breaking into a chicken coop,[253] nor a stone vault in a cemetery,[254] though it is held that the general term may include a courthouse.[255] A statute punishing fraudulent cheating by means of "any note, check, or other instrument" has no application to the perpetration of a fraud by means of a deed.[256] Another statute provided that "every person who shall set fire to any building, or to any other material, with intent to cause any such building to be burned, or shall by any other means attempt to cause any building to be burned," should be punished. It was held that this would not support an indictment for an attempt based on solicitation alone, for, under the rule in question, the statute must be held to contemplate the employment of means similar to those enumerated; that is, physical means.[257]

Still, even in the case of laws affecting the life or liberty of the citizen, the courts would not be justified in making a fetich of this rule of interpretation, so as to annul or derogate from the manifest purpose of the legislature. Thus, for example, the provision of the federal constitution for

[252] Marquis v. City of Chicago, 27 Ill. App. 251; Moore v. City of Chicago, 69 Ill. App. 571; Commonwealth v. Kammerer, 13 S. W. 108, 11 Ky. Law Rep. 777; Remmington v. State, 1 Or. 281; State v. Bryant, 90 Mo. 534, 2 S. W. 836. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[253] State v. Schuchmann, 133 Mo. 111, 33 S. W. 35. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[254] People v. Richards, 108 N. Y. 137, 15 N. E. 371, 2 Am. St. Rep. 373. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[255] Gillock v. People, 171 Ill. 307, 49 N. E. 712; State v. Rogers, 54 Kan. 683, 39 Pac. 219. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[256] People v. Chretien, 137 Cal. 450, 70 Pac. 305. And see Shirk v. People, 121 Ill. 61, 11 N. E. 888. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[257] McDade v. People, 29 Mich. 50. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

the interstate extradition of persons charged with "treason, felony, or other crime" is not to be narrowed by a strict construction, but it applies to every offense, whether a felony or not, which is forbidden and made punishable by the laws of the state where the crime is committed.[258] So a statute prohibiting the sale in certain places of intoxicating liquors, provisions, "or other articles of traffic," is not to be restricted to articles of like nature with those enumerated, but the prohibition applies to all kinds of merchandise; the enumeration being merely of such articles as would be most likely to be exposed and most obnoxious to the prohibition.[259]

Limitations and Exceptions

The rule of construction, that general and unlimited terms are restrained and limited by particular recitals, when used in connection with them, does not require the rejection of general terms entirely, and it is to be taken in connection with other rules of construction, not less important, such as that an act should be so construed as to carry out the declared intention of the legislature. "The doctrine of ejusdem generis is but a rule of construction to aid in ascertaining the meaning of the legislature, and does not warrant a court in confining the operation of a statute within narrower limits than was intended by the lawmakers. The general object of an act sometimes requires that the final general term shall not be restricted in meaning by its more specific predecessors."[260] For example, where a

[258] Kentucky v. Dennison, 24 How. 66, 16 L. Ed. 717; Morton v. Skinner, 48 Ind. 123; In re Brown, 112 Mass. 409, 17 Am. Rep. 114; State ex rel. Brown v. Stewart, 60 Wis. 587, 19 N. W. 529, 50 Am. Rep. 388; Commonwealth v. Hare, 36 Pa. Super. Ct. 125. Compare In re Greenough, 31 Vt. 279. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[259] Riggs v. State, 7 Lea (Tenn.) 475. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[260] Willis v. Mabon, 48 Minn. 140, 50 N. W. 1110, 16 L. R. A. 281, 31 Am. St. Rep. 626; State v. Williams, 2 Strob. (S. C.) 474; Kaiser v. Idleman (Or.) 108 Pac. 193, 28 L. R. A. (N. S.) 169; Wonner v. City of Carterville, 142 Mo. App. 120, 125 S. W. 861; Prindle v. United States, 41 Ct. Cl. 8; Vassey v. Spake, 83 S. C. 566, 65 S. E. 825; Gibson v. People, 44 Colo. 600, 99 Pac. 333; Mertens v. South-

statute prohibited judicial officers from exacting fees, except as expressly allowed in the act, from "any guardian, executor, administrator, or other person," and there was nothing in the context to show an intention to restrict the operation of the statute to probate business, the court thought it plainly evident that the legislature designed to put a stop to the taking of excessive fees in all cases before the courts, and hence the law was applied where an illegal fee had been taken in a criminal case, though that was not at all ejusdem generis with those enumerated.[261] In another case, where a statute imposed a punishment for resisting a "sheriff, constable, or other officer," it was held that, as a supervisor of roads is completely within the term "officer," he must be deemed within the protection of the statute, unless the context indicated that the legislature intended to include only that particular class of officers who are ministerially connected with the courts.[262] On similar principles, the court in South Carolina ruled that the act imposing a penalty on any person who willfully put into any bale of cotton any "stone, wood," or "any matter or thing whatsoever," embraced the putting in of an undue quantity of water. This decision was rested on the ground that the plain and evident purpose of the legislature was to punish frauds in packing cotton, without regard to the character of the material used.[263] In a municipal ordinance respecting the "hawking and peddling of market produce and other articles," the general term includes everything which may be disposed of by the method known as "hawking or peddling," and cannot be restricted to articles

ern Coal & Mining Co., 235 Ill. 540, 85 N. E. 743; Pein v. Miznerr, 41 Ind. App. 255, 83 N. E. 784; Misch v. Russell, 136 Ill. 22, 26 N. E. 528, 12 L. R. A. 125; State v. Broderick, 7 Mo. App. 19; Williams v. Williams, 10 Yerg. (Tenn.) 20. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[261] Foster v. Blount, 18 Ala. 687. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[262] Woodworth v. State, 26 Ohio St. 196. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[263] State v. Holman, 3 McCord (S. C.) 306. And see State v. Solomon, 33 Ind. 450. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

of food; hence it may include going from house to house and soliciting the sale of books.[264] A statute providing that a street railroad may be operated by "steam, horse, or other power" does not limit the road to the employment of animal power (the use of steam being elsewhere forbidden), but it may employ electricity.[265]

It may also be stated generally that the courts are more disposed to relax the severity of this rule (which is really a rule of strict construction) in the case of statutes obviously remedial in their nature or designed to effect a beneficent purpose. For example, the term "other final process," in a constitutional provision exempting certain personal property from sale on execution or other final process, has been held to grant an exemption from garnishment; the court saying that "to hold otherwise would be a too narrow interpretation of the constitutional provision founded in humanity and benevolence, and intended to secure an unfortunate debtor the means of livelihood free from the claims of creditors." [266]

Another very important limitation upon the application of this rule is that when the particular and specific words embrace all the objects in their class, or exhaust the whole genus, the general words following cannot be regarded as mere surplusage or as devoid of meaning. On the contrary, attention must be paid to the rule (said to be more imperative than the "ejusdem generis" rule) that a statute must be so construed, if possible, that effect shall be given to every word of it. Here, therefore, the general words cannot be restricted to the similitude of the specific terms, but must be interpreted as applicable to a larger class, or as embracing objects definitely within their own meaning, but

[264] Borough of Warren v. Geer, 117 Pa. 207, 11 Atl. 415. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[265] Taggart v. Newport St. Ry. Co., 16 R. I. 668, 19 Atl. 326, 7 L. R. A. 205; Hudson River Tel. Co. v. Watervliet Turnpike & R. Co., 56 Hun, 67, 9 N. Y. Supp. 177. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[266] Williamson v. Harris, 57 Ala. 40, 29 Am. Rep. 707. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

not of the likeness of those before enumerated.[267] On this principle, a statutory provision exempting from taxation property given in support of religious, charitable, or educational institutions, and applicable to "lands, tenements, hereditaments, and other estate" so given, may be construed to include money.[268]

Care must also be taken, in applying the rule under consideration, to see that the words supposed to be particular or specific, and which precede the general term or terms, really are an enumeration of individual things; for if the preceding term is general, as well as that which follows, there is no place for this rule to apply. An example of this is found in a statute relating to cheating by means of "any false token or writing, or by any other false pretense." Here the last clause is not to be limited by that which precedes, because "false token" and "false writing" are generic terms, not specific, and the statute does not attempt to enumerate the pretenses which shall be held criminal.[269]

It is further to be remarked that this principle or rule applies only where the specific words preceding the general expression are all of the same nature. "Where they are of different genera, the meaning of the general word remains unaffected by its connection with them. Thus, where an act made it penal to convey to a prisoner, in order to facili-

[267] Hyde's Ex'rs v. Hyde, 64 N. J. Eq. 6, 53 Atl. 593; United States Cement Co. v. Cooper, 172 Ind. 599, 88 N. E. 69; Weiss v. Swift & Co., 36 Pa. Super. Ct. 376; Ellis v. Murray, 28 Miss. 129; Strange v. Board of Com'rs of Grant County, 173 Ind. 640, 91 N. E. 242, 506. And see Hurley v. Inhabitants of South Thomaston, 105 Me. 301, 74 Atl. 734, holding that where a statute deals with a genus, anl something afterwards comes into existence which is a species of it, the language of the statute will be extended to the new matter, though it was not known and could not have been contemplated by the legislature at the time the act was passed. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[268] Atwater v. Inhabitants of Town of Woodbridge, 6 Conn. 223, 16 Am. Dec. 46. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[269] Higler v. People, 44 Mich. 299, 6 N. W. 664, 38 Am. Rep. 267. And see Martin v. State, 156 Ala. 89, 47 South. 104. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

tate his escape, any 'mask, dress, or disguise, or any letter, or any other article or thing,' it was held that the last general terms were to be understood in their primary and wide meaning, and as including any article or thing whatsoever which could in any manner facilitate the escape of a prisoner, such as a crowbar." [270]

Finally, when it can be seen that the particular word or term by which the general term is followed was inserted, not to give a coloring to the general term, but for a distinct object, then, to carry out the object of the statute, the general term should govern; it would be a mistake to allow the rule to pervert the construction.[271]

EXPRESS MENTION AND IMPLIED EXCLUSION

72. It is a general rule of statutory construction (to be applied under proper conditions and with important limitations) that the express mention of one person, thing, or consequence is tantamount to an express exclusion of all others.[272]

The maxim "expressio unius est exclusio alterius" is of very important, though limited, application in the interpretation of statutes. It is based upon the rules of logic and the natural workings of the human mind. But it is not to be taken as establishing a Procrustean standard to which all statutory language must be made to conform. On the contrary, it is useful only as a guide in determining the

[270] Maxwell, Interp. (2d Ed.) 413, citing Queen v. Payne, L. R. 1 C. C. 27. And see McReynolds v. People, 230 Ill. 623, 82 N. E. 945. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[271] State v. Broderick, 7 Mo. App. 19; Wonner v. City of Carterville, 142 Mo. App. 120, 125 S. W. 861. *See "Statutes," Dec. Dig. (Key No.) § 194; Cent. Dig. § 272.*

[272] Consolidated Coal Co. of St. Louis v. Miller, 236 Ill. 149, 86 N. E. 205; Goodrich v. State, 133 Wis. 242, 113 N. W. 388; In re Bailey's Estate, 31 Nev. 377, 103 Pac. 232; McFadden v. Blocker, 2 Ind. T. 260, 48 S. W. 1043, 58 L. R. A. 878; Wabash R. Co. v. United States, 178 Fed. 5, 101 C. C. A. 133. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

probable intention of the legislature, and if it should be clearly apparent, in any particular case, that the legislature did not in fact intend that its express mention of one thing should operate as an exclusion of all others, then the maxim must give way.[273] It has indeed been said that, at least in the construction of criminal statutes, this rule is too general and subject to too many exceptions in its application, to be allowed to govern.[274] But though it must be applied with great caution, there are still many cases in which it undoubtedly helps the interpreter to a clear understanding of the legislative design. It is particularly applicable in the construction of such statutes as create new rights or remedies, derogate from the common law, impose penalties or punishments, or otherwise come under the rule of strict construction. For instance, where a statute enlarging the powers of married women specifically enumerates the cases in which they may sue in their own names, this maxim applies, and they cannot maintain an action in any other cases.[275] So, where a statute defining an offense designates one class of persons as subject to its penalties, it is to be understood that all other persons are not made liable.[276] Again, when a statute assumes to specify the effects of a certain provision, it is to be presumed that no others are intended than those described.[277] And so, if there is an enumeration of the cases in which creditors shall be allowed to recover interest on their demands, it may safely be as-

[273] City of Portland v. New England Telephone & Telegraph Co., 103 Me. 240, 68 Atl. 1040; Swick v. Coleman, 218 Ill. 33, 75 N. E. 807; McFarland v. Missouri, K. & T. Ry. Co., 94 Mo. App. 336, 68 S. W. 105; Kemp v. City of Monett, 95 Mo. App. 452, 69 S. W. 31; City of Lexington v. Commercial Bank, 130 Mo. App. 687, 108 S. W. 1095; Kinney v. Heuring, 44 Ind. App. 590, 87 N. E. 1053. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[274] State v. Connor, 7 La. Ann. 379. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[275] Miller v. Miller, 44 Pa. 170. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[276] Howell v. Stewart, 54 Mo. 400. Johnson v. Southern Pac. Co., 117 Fed. 462, 54 C. C. A. 508. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[277] Perkins v. Thornburgh, 10 Cal. 189. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

sumed that it was not the legislative intention to allow it in any other cases.[278] In an act forming a new county out of portions of old ones, a provision for the transfer of suits pending against defendants from the courts of the old counties into those of the new, without referring to administrations pending in the former, is to be construed as an expression of legislative intent that such administrations should not be removable.[279] Again, a law of Texas, enacted in 1846, provided that collectors of taxes should receive in payment thereof "all coins made current by the laws of the United States and the exchequer bills of the republic." By previous laws they had been authorized to receive certain certificates issued by the republic. It was held that they were not bound to receive these certificates after the passage of the act mentioned.[280] Particularly when a statute gives a new right or a new power, and provides a specific, full, and adequate mode of executing the power or enforcing the right given, the fact that a special mode is prescribed will be regarded as excluding, by implication, the right to resort to any other mode of executing the power or of enforcing the right.[281] A statute granting pieces of land to

[278] Watkins v. Wassell, 20 Ark. 410. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[279] Page v. Bartlett, 101 Ala. 193, 13 South. 768. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[280] Bryan v. Sundberg, 5 Tex. 418. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[281] Scott v. Ford, 52 Or. 288, 97 Pac. 99; Johnston v. City of Louisville, 11 Bush (Ky.) 527. Where a statute, which confers special privileges, also imposes specified duties, and provides a remedy for the neglect of them, that remedy alone must be pursued by persons who would seek redress for such neglect. Bassett v. Carleton, 32 Me. 553, 54 Am. Dec. 605; Calking v. Baldwin, 4 Wend. (N. Y.) 667, 21 Am. Dec. 168. A statute incorporating the proprietors of a canal having prescribed a particular remedy for all damages occasioned by the opening of the canal, all other modes of remedy are excluded by necessary implication. Spring v. Russell, 7 Me. 273. A statute which enumerates the particular things which shall be necessary to create a lien on real estate excludes the idea of the doing of any other things as essential to the completeness of the lien. Hughes v. Wallace (Ky.) 118 S. W. 324. And see Taylor v. Taylor, 66 W. Va. 238, 66 S. E. 690. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

Indians, and prescribing a specific mode in which they may sell the same, impliedly forbids a sale in any other mode.[282] So, an act of Congress conferring on the secretary of war the power to discharge enlisted minors on certain conditions, must be construed as having provided a mode by which persons improperly enlisted can be discharged, and as having forbidden other modes of obtaining their discharge.[283] Another case in which this maxim may almost invariably be followed is that of a statute which makes certain specific exceptions to its general provisions. Here we may safely assume that all other exceptions were intended to be excluded.[284] For instance, where a law imposing taxes generally makes an express exception in favor of a certain class of persons, this exception excludes all others, and negatives the idea that any other exception was intended.[285]

But there are many cases in which it would obviously be inappropriate to judge the statute solely by the maxim in question. For one thing, "the maxim does not apply to a statute the language of which may fairly comprehend many different cases, in which some only are expressly mentioned by way of example merely, and not as excluding others of a similar nature." [286] Again, where the statute is plainly directed to one particular thing, and there is no reason why its terms should in any manner affect other related or similar things lying outside its specific purpose, the rule of "expressio unius" would be an unsafe guide. Thus, a law prescribing what shall be an appearance for a certain pur-

[282] Smith v. Stephens, 10 Wall. 321, 19 L. Ed. 933. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[283] Matter of O'Connor, 48 Barb. (N. Y.) 258. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[284] Wabash R. Co. v. United States, 178 Fed. 5, 101 C. C. A. 133; Cella Commission Co. v. Bohlinger, 147 Fed. 419, 78 C. C. A. 467; Kunkalman v. Gibson, 171 Ind. 503, 84 N. E. 985; Hering v. Clement, 133 App. Div. 293, 117 N. Y. Supp. 747. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[285] Miller v. Kirkpatrick, 29 Pa. 226; Montgomery v. Inhabitants of City of Trenton, 40 N. J. Law, 89. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[286] Sutherland, Stat. Constr. § 329. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

pose does not preclude an appearance in a different manner for other purposes.[287] And although a statute provides that a certain thing shall prove a certain fact, this does not render other proof of the fact incompetent, unless it is explicitly so provided.[288]

It is sometimes said that the converse of this rule is equally available in statutory construction; that is, that the express exclusion of one thing will operate as the inclusion of all others. Thus, if a statute explicitly provides that a court, in certain cases, shall not impose a fine of less than $100, this implies the power to impose a fine of $100 or more.[289] But this inversion of the rule is to be applied with even greater caution than the rule itself. We should not infer the inclusion of one thing from the exclusion of another, unless such an inference is very clearly in accordance with the intention of the legislature, or unless it is necessary to give the statute effect and operation. Particular care should be observed in resisting the conclusion that the express shutting out of one thing will necessarily let in its opposite. For example, if a statute declares that husband and wife shall not be competent or compellable to give evidence for or against each other in any criminal proceeding, this does not make them competent in civil cases.[290]

RELATIVE AND QUALIFYING TERMS

73. As a general rule, relative, qualifying, or limiting words or clauses in a statute are to be referred to the next preceding antecedent, unless the context, or the evident meaning of the enactment, requires a different construction.

[287] State ex rel. Curtis v. McCullough, 3 Nev. 202. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[288] Town of Bethlehem v. Town of Watertown, 51 Conn. 490. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[289] Hankins v. People, 106 Ill. 628. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

[290] Barbat v. Allen, 7 Exch. 609. *See "Statutes," Dec. Dig. (Key No.) § 195; Cent. Dig. § 273.*

This grammatical rule is of use only in cases where there is ambiguity or doubt on the face of the statute. If there is difficulty in interpreting the qualifying words of a sentence, the rule is to apply the relatives "which," "such," "said," and other relative or limiting words or phrases, to such terms or clauses as shall immediately precede them, rather than to such as are more remote.[291] But the rule that a relative or qualifying word refers to its last antecedent is not invariable. It will yield to the evident sense and meaning of the statute. It is a rule of grammar, and a statute is presumed to be grammatically expressed. But this will not be held in the face of the apparent and rational interpretation of the act.[292] "It is true that in strict grammatical construction, the relative ought to apply to the last antecedent; but there are numerous examples in the best writers to show that the context may often require a deviation from this rule, and that the relative may be connected with nouns which go before the last antecedent, and either take from it or give to it some qualification." [293] Particularly where a relative or qualifying phrase cannot be applied to its immediate antecedent without producing absurd results, or violating the evident purpose of the legislature, the rule requiring such reference

[291] Gaither v. Green, 40 La. Ann. 362, 4 South. 210; Cushing v. Worrick, 9 Gray (Mass.) 382; Fowler v. Tuttle, 24 N. H. 9; Chesnut Hill & Spring House Turnpike Road Co. v. Montgomery County, 228 Pa. 1, 76 Atl. 726; Piper v. Boston & M. R. R. (N. H.) 75 Atl. 1041; Old Dominion Building & Loan Ass'n v. Sohn, 54 W. Va. 101, 46 S. E. 222; Ellis v. Horine's Devisees, 1 A. K. Marsh. (Ky.) 417; Hinrichsen v. Hinrichsen, 172 Ill. 462, 50 N. E. 135; Summerman v. Knowles, 33 N. J. Law, 202; Steinlein v. Halstead, 52 Wis. 289, 8 N. W. 881; Pub. St. N. H. 1901, c. 2, § 14; V. S. 15. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[292] Fisher v. Counard, 100 Pa. 63; Gyger's Estate, 65 Pa. 311; State v. Stoller, 38 Iowa, 321; Greenough v. Phœnix Assur. Co. of London, 206 Mass. 247, 92 N. E. 447; Kemp v. Holland, 10 Mo. 255; Ricketts v. Lewis, 1 Barn. & Ald. 197. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[293] Staniland v. Hopkins, 9 Mees. & W. 178, per Lord Abinger. See, also, Great Western R. Co. v. Swindon & C. E. R. Co., L. R. 9 App. Cas. 787. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

must be rejected; and in such a case, the phrase may be made to qualify any other part of the statute to which the intention of the legislature, so far as it can be discovered, would seem to make it applicable.[294] For instance, a statute provided that certain officers should not be "liable to military or jury duty, nor to arrest on civil process, or to service of subpœnas from civil courts, whilst actually on duty." According to the usual rules of English composition, the qualifying phrase "whilst actually on duty" would apply only to the last antecedent, "service of subpœnas," etc. But it was held that this would not carry out the plain and evident intention of the legislature, and consequently the act should be read as exempting these persons, whilst actually on duty, both from arrest and from the service of process.[295] Again, a statute authorized exterritorial service of process on nonresident defendants in suits in equity "concerning goods, chattels, lands, tenements, or hereditaments, or for the perpetuating of testimony concerning any lands, tenements, and so forth, situate or being within the jurisdiction of such court." It was held that the qualifying phrase "situate or being within the jurisdiction" referred not merely to the last antecedent, "perpetuating of testimony," etc., but also to the first clause of the sentence quoted.[296] So again, a statutory authority to levy a tax to defray the "current expenses of the year" has been held equivalent to "the expenses of the current year," because the adjective could properly be made to qualify only the

[294] State ex rel. Board of Com'rs of Ross County v. Zanesville & Maysville Turnpike Road Co., 16 Ohio St. 308. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[295] Hart v. Kennedy, 14 Abb. Prac. (N. Y.) 432. And see United States v. Santistevan, 1 N. M. 583, holding that, where several conditions are set out disjunctively in a statute, a qualifying phrase attached to the last applies equally to each of the others which has not a qualifying phrase attached to itself, and where the qualification will not render the condition inoperative. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[296] Eby's Appeal, 70 Pa. 311. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

last word.[297] Also it is said that general words occurring at the end of a sentence are presumed to refer to and qualify the whole, but if they occur in the middle of a sentence, and obviously apply to a particular portion of it, they are not to be extended to what follows them.[298]

REDDENDO SINGULA SINGULIS

74. Where a sentence in a statute contains several antecedents and several consequents, they are to be read distributively; that is to say, each phrase or expression is to be referred to its appropriate object.

"The different portions of a sentence, or different sentences, are to be referred respectively to the other portions or sentences to which we can see they respectively relate, even if strict grammatical construction should demand otherwise. The maxim of construction, 'reddendo singula singulis,' is well established." [299] "It is one of the best settled rules of construction that words in different parts of a statute must be referred to their appropriate connection, giving to each in its place its proper force, reddendo singula singulis, and, if possible, rendering none of them useless or superfluous." [300] To illustrate, a question having arisen as to the construction of the words "for money or other good consideration paid or given," in an English statute, it was decided that the consequent "paid" should be referred to the antecedent "money" and the consequent "given" to the antecedent "consideration"; that is, the sentence should be

[297] Babcock v. Goodrich, 47 Cal. 488. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[298] Coxson v. Doland, 2 Daly (N. Y.) 66. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[299] Commonwealth v. Barber, 143 Mass. 560, 10 N. E. 330. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[300] McIntyre v. Ingraham, 35 Miss. 25; Old Dominion Building & Loan Ass'n v. Sohn, 54 W. Va. 101, 46 S. E. 222. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

read as if it spoke of "money paid or other good consideration given." [301] Again, a statute provided for its adoption by cities and towns "at a legal meeting of the city council or the inhabitants of the town called for that purpose." It was held, on this principle, that only in the case of a town need a meeting be called for the specific purpose.[302] An act of Congress declared that all fines, penalties, and forfeitures accruing under the laws of Maryland and Virginia, in the District of Columbia, should be recovered by indictment or information in the name of the United States, or by action of debt in the name of the United States and of the informer. It was held that a proceeding for a penalty under the law of one of those states, which, by such law, could not have been taken by indictment, but by a private action, should be, not by indictment in the name of the United States, but by an action of debt.[303] Again, "where several words importing power, authority, and obligation, are found at the commencement of a clause containing several branches, it is not necessary for each of those words to be applied to each of the different branches of the clause; it may be construed reddendo singula singulis; the words giving power and authority may be applicable to some branches, and those of obligation to others." Thus, in the case from which this quotation is made, it appeared that an act of Parliament provided "it shall and may be lawful for the said directors, and they are hereby authorized and required to form a new common sewer" in a certain direction, "and also to alter or reconstruct all or any of the sewers of the city at the mouths." It was held, taking the language distributively, that the directors were "required" to construct a new common sewer, and "authorized" to alter or reconstruct the existing ones.[304]

[301] Potter's Dwarris on Stat. 230. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[302] Quinn v. Lowell Electric Light Corp., 140 Mass. 106, 3 N. E. 200. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[303] United States v. Simms, 1 Cranch, 252, 2 L. Ed. 98. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent. Dig. § 274.*

[304] King v. Bristol Dock Co., 6 Barn. & C. 181. *See "Statutes," Dec. Dig. (Key No.) § 196; Cent Dig. § 274.*

CONJUNCTIVE AND DISJUNCTIVE PARTICLES

. The word "and," in a statute, may be read "or," and vice versa, whenever the change is necessary to give the statute sense and effect, or to harmonize its different parts, or to carry out the evident intention of the legislature.[305]

This rule is based upon the assumption that the legisla re could not have intended to produce an absurd or un asonable result, or to express itself in terms which would feat the very objects of the enactment; and consequently, hen such effects would follow a literal construction of e statute, the conjunctive particle may be read as dis nctive, or vice versa, on the theory that the word to be rrected was inserted by inadvertence or clerical error. or instance, a constitutional provision that no person shall deprived of his life, liberty, or property "without due ocess of law and the judgment of his peers" does not re ire a trial by jury in every case where one's liberty or operty is to be affected; but in view of the whole his ry of this constitutional guaranty, from Magna Charta wn, it is apparent that the word "and" should be read r."[306] So a statute authorizing a city to provide for the

[305] Metropolitan Board of Works v. Steed, L. R. 8 Q. B. Div. 445; mmonwealth v. Harris, 13 Allen (Mass.) 534; Commonwealth v. Grif , 105 Mass. 185; State v. Brandt, 41 Iowa, 593; McConky v. Superior urt of Alameda County, 56 Cal. 83; O'Connell v. Gillespie, 17 Ind.); Ayers v. Chicago Title & Trust Co., 187 Ill. 42, 58 N. E. 318; omas v. City of Grand Junction, 13 Colo. App. 80, 56 Pac. 665; ite v. Myers, 146 Ind. 36, 44 N. E. 801; Douglass v. State, 18 Ind. p. 289, 48 N. E. 9; James v. United States Fidelity & Guaranty ., 133 Ky. 299, 117 S. W. 406; People ex rel. Cohen v. Butler, 125 p. Div. 384, 109 N. Y. Supp. 900; People ex rel. Municipal Gas of Albany v. Rice, 138 N. Y. 151, 33 N. E. 846; Eisfeld v. Ken rth, 50 Iowa, 389; Collins Granite Co. v. Devereux, 72 Me. 422; lliams v. Poor, 65 Iowa, 410, 21 N. W. 753; Price v. Forrest, 54 J. Eq. 669, 35 Atl. 1075. *See "Statutes," Dec. Dig. (Key No.)* § *'; Cent. Dig. § 275.*

[306] Jelly v. Dils, 27 W. Va. 267. *See "Statutes," Dec. Dig. (Key .) § 197; Cent. Dig. § 275.*

"health, comfort, and convenience" of the inhabitants does not require that its ordinances should have relation to all three of these objects at once.[307] A law exempting from execution the tools of a mechanic, used to carry on his trade for the support of "himself and family," should not be so restricted as to deny its benefits to a mechanic who has no family, but "and" should be read as equivalent to "or." [308] The same change should be made in the reading of a statute which authorizes the probate of a script, as a holographic will, when found among the "valuable papers and effects" of the decedent. To limit it to cases where he happened to keep his papers and his valuable effects all together in the same place would virtually repeal the statute or greatly diminish its benefits.[309] And a similar construction has been applied to a law requiring certain resolutions of a city council to be "published and posted," the court holding that the purpose of the law would be satisfied by either publication or posting.[310] And so, where a statute provided that a person libeled, in certain cases, might proceed against the author of the libel by indictment "or" bring an action at law for his damages, it was held that it could not possibly have been the intention of the legislature to give the plaintiff merely his choice between these two remedies, and consequently the word "or" must be read "and." [311]

In Criminal and Penal Statutes

It has sometimes been broadly stated that the word "and" can never be read "or," or vice versa, in criminal and penal statutes, where the rule of strict construction prevails.[312]

[307] City of Red Wing v. Guptil, 72 Minn. 259, 75 N. W. 234, 41 L. R. A. 321, 71 Am. St. Rep. 485. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[308] Geiger v. Kobilka, 26 Wash. 171, 66 Pac. 423, 90 Am. St. Rep. 733. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[309] Hughes v. Smith, 64 N. C. 493. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[310] Washburn v. Lyons, 97 Cal. 314, 32 Pac. 310. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[311] Foster v. Commonwealth, 8 Watts & S. (Pa.) 77. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[312] Buck v. Danzenbacker, 37 N. J. Law, 359; Fagan v. State, 47 N. J. Law, 175; United States v. Ten Cases Shawls, 2 Paine, 162, 28

But it is believed that this statement is altogether too general. It is opposed to the greater weight of authority, most of the cases holding that such a conversion of these two words, one into the other, is permissible even in statutes of that character, and even where it may operate to the disadvantage of the accused, when the spirit and reason of the law plainly require and justify it.[313] At any rate, if there is to be a special rule on this point applicable only to penal laws, it is best to adopt that set forth in certain decisions of the Supreme Court of North Carolina, namely, that the conjunctive particle should not be read as a disjunctive, or vice versa, when the effect would be to aggravate the offense or increase the punishment.[314]

On this principle, a statute punishing the offense of exposing an infant with intent to abandon it, when done by "the father and mother," will be so construed that the offense therein denounced may be committed by either parent alone, "or" being substituted for "and." [315] So a statute providing that any person violating "the first and second sections of this act" shall be liable to a penalty renders a person liable for a violation of either section.[316] On the other hand, where a statute defined the common-law offense of burglary, and made it a felony to "break or enter" a dwelling house in the nighttime, it was held that it should

Fed. Cas. 16,448. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[313] State v. Myers, 10 Iowa, 448; People v. Lytle, 7 App. Div. 553, 40 N. Y. Supp. 153; Williams v. Poor, 65 Iowa, 410, 21 N. W. 753; City of Indianapolis v. Huegele, 115 Ind. 581, 18 N. E. 172; People v. Sweetser, 1 Dak. 308, 46 N. W. 452; Ex parte Chin Yan, 60 Cal. 78; Rolland v. Commonwealth, 82 Pa. 306, 22 Am. Rep. 758; United States v. Moore (D. C.) 104 Fed. 78. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[314] State v. Walters, 97 N. C. 489, 2 S. E. 539, 2 Am. St. Rep. 310; State v. Kearney, 8 N. C. 53. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[315] State v. Smith, 46 Iowa, 670. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[316] People v. Sweetser, 1 Dak. 308, 46 N. W. 452; Streeter v. People, 69 Ill. 595; State v. Cain, 9 W. Va. 559; Miller v. State, 3 Ohio St. 475. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

be read "break and enter." [317] And so, where a statute imposed a punishment upon any person who should place obstructions in a water course, whereby the flow of water should be lessened "or" navigation should be impeded, it was held that the word "or" should be read "and." [318] But where a statute directs a fine "and" imprisonment, as punishment for an offense, the court is bound to inflict both if the defendant is found guilty.[319] And where it provides for the punishment of persons who shall commit certain acts "willfully or maliciously," the word "or" cannot be changed into "and." [320]

Limitations of Rule

It must be remembered that the words "and" and "or" are in no sense interchangeable terms, but, on the contrary, they are used in the structure of language for purposes entirely different. It must be assumed that the language of a statute is chosen with due regard to grammatical propriety. And therefore the courts are not at liberty to treat these words as interchangeable on mere conjecture or according to their own notions of expediency or policy. On the contrary, they should be taken in their strict and proper meaning when such a reading does not render the sense of the law dubious, and the substitution of one for the other is permissible only when the context or other provisions of the statute require it, or when that is necessary to avoid an absurd or impossible consequence and to carry out the evident intention of the legislature.[321]

[317] Rolland v. Commonwealth, 82 Pa. 306, 22 Am. Rep. 758. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[318] State v. Pool, 74 N. C. 402. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[319] United States v. Vickery, 1 Har. & J. (Md.) 427, Fed. Cas. No. 16,619. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[320] State v. Tiffany, 44 Wash. 602, 87 Pac. 932. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[321] Koch v. Fox, 71 App. Div. 288, 75 N. Y. Supp. 913; Oxsheer v. Watt, 91 Tex. 402, 44 S. W. 67; Witherspoon v. Jernigan, 97 Tex. 98, 76 S. W. 445; City of Philadelphia v. Arrott, 8 Phila. (Pa.) 41; Merchants' & Farmers' Bank v. McKellar, 44 La. Ann. 940, 11 South. 592; Robinson v. Southern Pac. Co., 105 Cal. 526, 38 Pac. 94, 28 L. R. A. 773; Collins Granite Co. v. Devereux, 72 Me. 422; Common-

NUMBER AND GENDER OF WORDS

76. Words in a statute importing the plural number may be made applicable to single persons or things, and vice versa, and words importing the masculine gender may include females, whenever, in either case, such a construction is in accord with the evident meaning and purpose of the legislature.

It is a general rule, as above stated, that words or phrases in a statute expressed in the plural may be taken as including the singular, and words in the singular may be extended to several. But it is held that this rule is to be applied only when the plain and evident sense and meaning of the words, derived from the context, render such a construction necessary to effect the intention of the legislature.[322] A statute, for example, enacted that it should be a felony to steal any "bank notes," and it was adjudged that it was a felony to steal one single note.[323] So, where an act provided for the prosecution of any person who should keep "houses of bawdry and ill fame," it was held that a person might be convicted who kept but one such house.[324] And the word "persons," in the plural, may sometimes be construed as applicable to a single person and vice versa.[325] Where a

wealth ex rel. Attorney General v. Kilgore, 82 Pa. 396; Rice v. United States, 53 Fed. 910, 4 C. C. A. 104; In re Steinruck's Insolvency, 225 Pa. 461, 74 Atl. 360. *See "Statutes," Dec. Dig. (Key No.) § 197; Cent. Dig. § 275.*

[322] Garrigus v. Board of Com'rs of Parke County, 39 Ind. 66; Jocelyn v. Barrett, 18 Ind. 128. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

[323] King v. Hassel, 1 Leach Cr. L. 1. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

[324] State v. Main, 31 Conn. 572. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

[325] Hill v. Williams, 14 Serg. & R. (Pa.) 287; People v. Croton Aqueduct Board, 5 Abb. Prac. (N. Y.) 316; Commonwealth ex rel. Mercer County Court v. Gabbert's Adm'r, 5 Bush (Ky.) 438; Brown v. Delafield, 1 Denio (N. Y.) 445; Stewart v. Brown, 37 N. Y. 350, 93 Am. Dec. 578. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

statute imposed penalties for a failure "to comply with the conditions of" the section, it was considered that a disobedience of any one of the provisions subjected the delinquent to the penalty.[326] Conversely, the word "party," in a statute regulating applications for a change of venue, was held to signify all of the defendants or all of the plaintiffs in an action.[327]

For similar reasons, and under the same conditions, and for the same purposes, words importing the masculine gender, such as "he," "his," or "man," may be held applicable to a woman. In some states, this rule of construction is enacted in the code.[328] Such is the case, for example, in Arkansas; and in that state, where a statute of distribution provided for the case where "any man shall die, leaving minor children and no widow," the provision was held to be applicable to the case of a woman dying and leaving minor children and no husband.[329] But the Supreme Court of Wisconsin refused to admit a woman to practice as an attorney at its bar, on the ground that the statute applicable to such cases provided that, to entitle an applicant to practice in that court, "he" should be licensed by the court. The judges refused to apply the well-known rule of statutory construction that words of the masculine gender may be applied to females, unless such construction is inconsistent with the manifest intention of the legislature, "in view of the universal exclusion of females from the bar, and in the absence of any other evidence of a legislative intent to require their admission." [330]

[326] State v. Kansas City, Ft. S. & G. R. Co. (C. C.) 32 Fed. 722. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

[327] Rupp v. Swineford, 40 Wis. 28. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

[328] Turner's Adm'r v. Whitten, 40 Ala. 530; Berniaud v. Beecher, 71 Cal. 38, 11 Pac. 802; Pen. Code Tex. 1895, arts. 21, 22; Hurd's Rev. St. Ill. 1901, c. 120, § 292; Ballinger's Ann. Codes & St. Wash. § 2462. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

[329] Smith v. Allen, 31 Ark. 268. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

[330] In re Goodell, 39 Wis. 232, 20 Am. Rep. 42. *See "Statutes," Dec. Dig. (Key No.) § 188; Cent. Dig. § 276.*

COMPUTATION OF TIME

77. Where a statute requires an act to be performed a certain number of days prior to a day named, or within a definite period after a day or event specified, or where time is to be computed either prior or subsequent to a day named, the usual rule is to exclude one day of the designated period and to include the other.[331]

78. The word "year," as employed in statutes, means a period of twelve calendar months or three hundred and sixty-five days, and always is understood as designating a calendar year, beginning on the first day of January, unless a contrary intent is discoverable from the context and the subject-matter of the enactment.

79. The word "month," in a statute, means a calendar month.

80. A "week" is a period of seven consecutive days, and when the term is used in statutes merely as a measure of time, the week may begin and end on any day; but when it designates a portion of time as marked off by the calendar, it must be understood as beginning on Sunday and ending on Saturday.

81. A "day," as this term is used in statutes, means a period of twenty-four hours, beginning and ending (usually but not invariably) at midnight.

[331] Stebbins v. Anthony, 5 Colo. 348; Odiorne v. Quimby, 11 N. H. 224; Spencer v. Haug, 45 Minn. 231, 47 N. W. 794; Weeks v. Hull, 19 Conn. 376, 50 Am. Dec. 249; Bonney v. Cocke, 61 Iowa, 303, 16 N. W. 139; State v. Jackson, 4 N. J. Law, 323; Magnusson v. Williams, 111 Ill. 450; Noble v. Murphy, 27 Ind. 502; Hahn v. Dierkes, 37 Mo. 574; Blake v. Crowninshield, 9 N. H. 304; Branch v. Wilmington & W. R. Co., 88 N. C. 570. *See "Time," Dec. Dig. (Key No.) § 9; Cent. Dig. §§ 11-32.*

Computing Number of Days

The rule stated above for the computation of a prescribed number of days, or a designated period, by which one day is excluded (generally the first) and the other included, is of very general application, and the courts are nearly all agreed in adopting it. But expressions in regard to time are sometimes found in statutes which require a different interpretation, by reason of the peculiarity of the language used. Thus, where a statute provides that it shall take effect "from and after" its passage, in computing the time when it takes effect, the day of its passage is to be excluded.[332] So, where notice of an official meeting is required to be given "three weeks before the time of meeting," three successive publications of the notice, made within less than three weeks before the meeting, are not a sufficient compliance.[333] Where a statute requires a notice to be given "ten clear days" before a certain time, this means ten perfect intervening days, both days being excluded; and hence a notice given on the 9th, to expire on the 19th, is not in time.[334] A statute requiring an inspection for public security to be made "once in six months" should be construed as meaning that not more than six months should elapse between two inspections. It is not satisfied by dividing time into periods of six months, and making one inspection early in one period and another late in the next.[335]

"Year"

This word may be so employed in contracts and even in statutes as to show plainly that a shorter period of time than twelve months is intended, and it must then be interpreted in the sense in which it appears to be used. Thus,

[332] Parkinson v. Brandenburg, 35 Minn. 294, 28 N. W. 919, 59 Am. Rep. 326. *See "Time," Dec. Dig. (Key No.) § 9; Cent. Dig. §§ 11–32.*

[333] In re North Whitehall Tp., 47 Pa. 156. *See "Time," Dec. Dig. (Key No.) § 9; Cent. Dig. §§ 11–32.*

[334] King v. Justices of Herfordshire, 3 Barn. & Ald. 581; Zouch v. Empsey, 4 Barn. & Ald. 522. *See "Time," Dec. Dig. (Key No.) § 9; Cent. Dig. §§ 11–32.*

[335] Virginia & M. Steam Nav. Co. v. U. S., Taney, 418, Fed. Cas. No. 16,973. *See "Time," Dec. Dig. (Key No.) § 9; Cent. Dig. §§ 11–32.*

it may denote that season or portion of a year during which agricultural operations are ordinarily carried on, or in which other business of the kind spoken of is conducted.[336] But in the absence of a controlling indication of this kind a "year" means a period of twelve months or three hundred and sixty-five days, the added day of a leap year being computed as one with the day immediately preceding.[337] So "half a year" means six months, and a "quarter of a year" is three months.[338] The year, thus defined as to length, is always understood to be a calendar year—that is, one beginning on the 1st day of January and ending on the 31st of December—unless a contrary intention is expressed.[339] But this is not invariably its meaning. It may be merely a measure of time, commencing on the day of any particular act or transaction, or a period of twelve months beginning on a fixed annual date or anniversary other than the 1st of January. This depends on the subject-matter of the enactment and the connection in which the term is used, and these should always be studied to give effect to the true intention of the legislature.[340] On this principle, the word

[336] Brown v. Anderson, 77 Cal. 236, 19 Pac. 487; Grant v. Maddox, 15 Mees. & W. 737. *See "Time," Dec. Dig. (Key No.) § 4; Cent. Dig. § 4.*

[337] Aultman & Taylor Co. v. Syme, 163 N. Y. 54, 57 N. E. 168, 79 Am. St. Rep. 565; Muse v. London Assur. Corp., 108 N. C. 240, 13 S. E. 94; Pol. Code Cal. § 3257; Laws N. Y. 1892, c. 677, § 25; Rex v. Addersly, 4 Dougl. 463. *See "Time," Dec. Dig. (Key No.) § 4; Cent. Dig. § 4.*

[338] Laws N. Y. 1892, c. 677, § 25; Rev. Codes N. D. 1899, § 5132; Civ. Code S. D. § 2466. *See "Time," Dec. Dig. (Key No.) § 4; Cent. Dig. § 4.*

[339] Fretwell v. McLemore, 52 Ala. 124; Garfield Township, Finney County, v. Dodsworth Book Co., 9 Kan. App. 752, 58 Pac. 565; United States v. Dickson, 15 Pet. 141, 10 L. Ed. 689; Engleman v. State, 2 Ind. 91, 52 Am. Dec. 494; David v. Hardin County, 104 Iowa, 204, 73 N. W. 576; Atlanta & C. Air Line Ry. v. Ray, 70 Ga. 674; Dickson v. Frisbee, 52 Ala. 165, 23 Am. Rep. 565. This rule is also enacted by statute in many of the states, as will appear by reference to the various codes and revisions. *See "Time," Dec. Dig. (Key. No.) § 4; Cent. Dig. § 4.*

[340] Thornton v. Boyd, 25 Miss. 598; Williams v. Bagnelle, 138 Cal. 699, 72 Pac. 408; Brown v. Anderson, 77 Cal. 236, 19 Pac. 487; Knode v. Baldridge, 73 Ind. 54; In re Providence Voters, 13 R. I.

has sometimes been interpreted as meaning a fiscal year, which need not and ordinarily does not coincide with the calendar year; and it is said that when it occurs in a revenue or tax law, the presumption is that it means a fiscal year.[341] So, also, it may mean a license year, or the period of time, not necessarily commencing with the 1st of January, for which licenses for various occupations are granted;[342] or it may denote a "political" year, or the space of time intervening between elections or during which elective officers hold their offices.[343]

"Month"

It was the rule of the English common law that the term "month," as used in a statute, meant a lunar month, that is, a period of twenty-eight days or four weeks.[344] This rule was applied in the common law courts, but was not recognized by the ecclesiastical courts. According to the usage of the latter, and also in the custom of merchants and by the mercantile law, a month was a calendar month; that is, a month reckoned according to the calendar, and containing a greater or less number of days according to the particular month intended. This latter doctrine was established as the law of England, so far as concerned the interpretation of this word in future acts of parliament, by St. 13 & 14 Vict. c. 21. In this country, either by statutory enactment, or by judicial interpretation without the aid of statutes, it has come to be the settled rule that a month, in

737; Inhabitants of Paris v. Inhabitants of Hiram, 12 Mass. 262. *See "Time," Dec. Dig. (Key No.) § 4; Cent. Dig. § 4.*

[341] Glasgow v. Rowse, 43 Mo. 479. *See "Time," Dec. Dig. (Key No.) § 4; Cent. Dig. § 4.*

[342] Disbrow v. Saunders, 1 Denio (N. Y.) 149. *See "Time," Dec. Dig. (Key No.) § 4; Cent. Dig. § 4.*

[343] Thornton v. Boyd, 25 Miss. 598; Inhabitants of Paris v. Inhabitants of Hiram, 12 Mass. 262; King v. Sawyer, 10 Barn. & C. 486; United States v. Dickson, 15 Pet. 141, 10 L. Ed. 689. *See "Time," Dec. Dig. (Key No.) § 4; Cent. Dig. § 4.*

[344] Rives v. Guthrie, 46 N. C. 84; Castle v. Burdett, 3 Term R. 623; Catesby's Case, 6 Coke, 62; Lacon v. Hooper, 6 Term R. 224; Webb v. Fairmaner, 3 Mees. & W. 473; Warburton v. Sandys, 14 Sim. 622. *See "Statutes," Cent. Dig. § 277; "Time," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 5–8.*

an act of Congress or of a state legislature, always means a calendar month, unless there is something clearly showing a contrary intention.[345] The theory is that the word "month" is not a technical term, but a word in popular and common use, and it should therefore be taken in its usual, common, and accepted meaning, and according to that meaning, it always denotes a calendar month, not a lunar month.[346]

"Week"

In its ordinary legal signification, a week is a period of seven consecutive days, commencing on Sunday morning and ending on Saturday night, and this is always its meaning when used in statutes as designating a space of time computed according to the calendar;[347] as, for example, where a statute provides that the judge shall designate the

[345] Sheets v. Seldon's Lessee, 2 Wall. 177, 17 L. Ed. 822; Guaranty Trust & S. D. Co. v. Green Cove Springs & M. R. Co., 139 U. S. 137, 11 Sup. Ct. 512, 35 L. Ed. 116; Brown v. Williams, 34 Neb. 376, 51 N. W. 851; Strong v. Birchard, 5 Conn. 357; Churchill v. President, etc., of Merchants' Bank, 19 Pick. (Mass.) 532; Bartol v. Calvert, 21 Ala. 42; Brudenell v. Vaux, 2 Dall. 302, Fed. Cas. No. 2,049; McGinn v. State, 46 Neb. 427, 65 N. W. 46, 30 L. R. A. 450, 50 Am. St. Rep. 617; Gasquet v. Crescent City Brewing Co. (C. C.) 49 Fed. 496; Riddle v. Hill's Adm'r, 51 Ala. 224; Scoville v. Anderson, 131 Cal. 590, 63 Pac. 1013; Daly v. Concordia Fire Ins. Co., 16 Colo. App. 349, 65 Pac. 416; Guaranty Trust & Safe-Deposit Co. v. Buddington, 27 Fla. 215, 9 South. 246, 12 L. R. A. 770; City of Holton v. Bimrod, 8 Kan. App. 265, 55 Pac. 505; Baltimore & D. P. R. Co. v. Pumphrey, 74 Md. 86, 21 Atl. 559; Mitchell v. Woodson, 37 Miss. 567; Hosley v. Black, 28 N. Y. 438; Muse v. London Assur. Corp., 108 N. C. 240, 13 S. E. 94; McMurchey v. Robinson, 10 Ohio, 496; Shapley v. Garey, 6 Serg. & R. (Pa.) 539; Bank of Tennessee v. Officer, 3 Baxt. (Tenn.) 173; Kimball v. Lamson, 2 Vt. 138; Brewer v. Harris, 5 Grat. (Va.) 285. *See "Statutes," Cent. Dig. § 277; "Time," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 5–8.*

[346] Gross v. Fowler, 21 Cal. 392. *See "Statutes," Cent. Dig. § 277; "Time," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 5–8.*

[347] Leach v. Burr, 188 U. S. 510, 23 Sup. Ct. 393, 47 L. Ed. 567; In re Tyson, 13 Colo. 482, 22 Pac. 810, 6 L. R. A. 472; Steinle v. Bell, 12 Abb. Prac. N. S. (N. Y.) 171; Ronkendorff v. Taylor, 4 Pet. 349, 7 L. Ed. 882; Raunn v. Leach, 53 Minn. 84, 54 N. W. 1058; Russell v. Croy, 164 Mo. 69, 63 S. W. 849; Medland v. Linton, 60 Neb. 249, 82 N. W. 866. *See "Time," Dec. Dig. (Key No.) § 6; Cent. Dig. § 9.*

"week of time" within which a sentence of death shall be executed,[348] or that a notice shall be published "once in each week," [349] or that certain action shall be taken in "the first week of October." [350] But where the term is used in law merely as a measure of duration, and without reference to the calendar, it denotes a period of seven consecutive days, irrespective of the "day of the week" on which that period may begin.[351]

"Day"

In statutory language a "day" means twenty-four hours. But whether it begins at midnight, or at sunrise, or at some other time, depends upon the intention of the legislature in each particular case, to be gathered from the context and from the general purpose and subject of the act.[352] An "astronomical" day extends from noon to noon; but the "natural" or "civil" day begins at midnight and extends for the space of twenty-four hours to the succeeding midnight; and it is in this latter sense that the word is to be understood in statutory enactments, unless a contrary meaning is expressed or necessarily implied.[353] But the term may

[348] In re Tyson, 13 Colo. 482, 22 Pac. 810, 6 L. R. A. 472. *See "Time," Dec. Dig. (Key No.) § 6; Cent. Dig. § 9.*

[349] In re City of New Orleans, 52 La. Ann. 1073, 27 South. 592. *See "Time," Dec. Dig. (Key No.) § 6; Cent. Dig. § 9.*

[350] Medland v. Linton, 60 Neb. 249, 82 N. W. 866. *See "Time," Dec. Dig. (Key No.) § 6; Cent. Dig. § 9.*

[351] Evans v. Job, 8 Nev. 322; Derby & Co. v. City of Modesto, 104 Cal. 515, 38 Pac. 901; Bird v. Burgsteiner, 100 Ga. 486, 28 S. E. 219; Raunn v. Leach, 53 Minn. 84, 54 N. W. 1058. *See "Time," Dec. Dig. (Key No.) § 6; Cent. Dig. § 9.*

[352] Commonwealth v. Wentworth, 15 Mass. 188; Zimmerman v. Cowan, 107 Ill. 631, 47 Am. Rep. 476. *See "Time," Dec. Dig. (Key No.) §§ 7–11; Cent. Dig. §§ 10–53.*

[353] State ex rel. Baxter v. Brown, 22 Minn. 482; Shaw v. Dodge, 5 N. H. 462; Pulling v. People, 8 Barb. (N. Y.) 384; Corwin v. Comptroller General, 6 S. C. 390; People ex rel. Harless v. Hatch, 33 Ill. 9, 137; City of Eureka v. Diaz, 89 Cal. 467, 26 Pac. 961; State ex rel. State Pharmaceutical Ass'n v. Michel, 52 La. Ann. 936, 27 South. 565, 49 L. R. A. 218, 78 Am. St. Rep. 364; Benson v. Adams, 69 Ind. 353, 35 Am. Rep. 220; Rose v. State, 107 Ga. 697, 33 S. E. 439; Kane v. Commonwealth, 89 Pa. 522, 33 Am. Rep. 787; Zimmerman v. Cowan, 107 Ill. 631, 47 Am. Rep. 476; Henderson v. Reynolds,

include portions of two natural days, making up a space of time not exceeding twenty-four hours,[354] or it may mean a working day or business day, including only that portion of the twenty-four hours commonly devoted to labor or business, or a day of eight hours or such other period as may be fixed by law as constituting a day for the labor of mechanics and artisans,[355] or the space of time from sunrise to sunset, or from dawn to the end of twilight in the evening, as in the law of burglary.[356]

It is also a general rule that the law does not regard fractions of a day. Hence when something is required to be done within a certain number of days from a given event or action, the day upon which the event occurs or the act is done must either be excluded entirely or else counted in as a whole day.[357] Where a statute gives to the owner of lands sold for nonpayment of taxes the privilege of redeeming them within two years from the sale, an offer of redemption is in time if made on the second anniversary of the day of the sale; that is, in computing the time, the day of the sale must be excluded, and the owner must be allowed the whole of the last day in which to redeem. "A day is always an indivisible point of time," says the court in Pennsylvania, "except where it must be cut up to prevent injustice. In the sense of these statutes, it has neither length nor breadth, but simply position without magnitude.

84 Ga. 159, 10 S. E. 734, 7 L. R. A. 327. *See "Time," Dec. Dig. (Key No.) §§ 7–11; Cent. Dig. §§ 10–53.*

[354] Fuller v. Schroeder, 20 Neb. 631, 31 N. W. 109; State v. Padgett, 18 S. C. 317; City of Eureka v. Diaz, 89 Cal. 467, 26 Pac. 961. *See "Time," Dec. Dig. (Key No.) §§ 7–11; Cent. Dig. §§ 10–53.*

[355] Fay & Egan Co. v. Brown, 96 Wis. 434, 71 N. W. 895; Robinson v. Dunn, 77 Cal. 473, 19 Pac. 878, 11 Am. St. Rep. 297; McCulsky v. Klosterman, 20 Or. 108, 25 Pac. 366, 10 L. R. A. 785; Hinton v. Locke, 5 Hill (N. Y.) 437; White v. Dallas County, 87 Iowa, 563, 54 N. W. 368; Smith v. Board of Com'rs of Jefferson County, 10 Colo. 17, 13 Pac. 917; Rev. St. Wyo. 1899, § 2587. *See "Time," Dec. Dig. (Key No.) §§ 7–11; Cent. Dig. §§ 10–53.*

[356] Nicholls v. State, 68 Wis. 416, 32 N. W. 543, 60 Am. Rep. 870; State v. McKnight, 111 N. C. 690, 16 S. E. 319; 4 Bl. Comm. 224. *See "Time," Dec. Dig. (Key No.) §§ 7–11; Cent. Dig. §§ 10–53.*

[357] Brown v. Buzan, 24 Ind. 194. *See "Time," Dec. Dig. (Key No.) § 11; Cent. Dig. § 53.*

If the time for redemption were fixed at one day after the sale, that day could not be the day of the sale; for it might be made at the last moment of the day, and the owner, being thus prevented from tendering on that day, would lose his right. The time mentioned must therefore be the following day. So of one year, and of two years." [358]

[358] Cromelian v. Brink, 29 Pa. 522; Edmundson v. Wragg, 104 Pa. 500, 49 Am. Rep. 590; Hare v. Carnall, 39 Ark. 196; Maxwell v. Jacksonville Loan & Imp. Co., 45 Fla. 425, 34 South. 255; Brainard v. Bushnell, 11 Conn. 16; Cummins v. Holmes, 11 Ill. App. 158; Towell v. Hollweg, 81 Ind. 154; Fox v. Abel, 2 Conn. 541; Brown v. Buzan, 24 Ind. 194; Haden v. Buddensick, 49 How. Prac. (N. Y.) 241; Pressley v. Board of Com'rs of Marion County, 80 Ind. 45; Follett v. Hall, 16 Ohio, 111, 47 Am. Dec. 365; Lester v. Garland, 15 Ves. 257. *See "Time," Dec. Dig. (Key No.) § 11; Cent. Dig. § 53.*

CHAPTER VI

INTRINSIC AIDS IN STATUTORY CONSTRUCTION

82. Context.
83. Title.
84. Preamble.
85. Chapter and Section Headings.
88. Punctuation.
89. Interpretation Clause.

CONTEXT

82. Sections, clauses, and provisions of a statute, as well as the particular words and phrases employed, are not to be considered in themselves alone and construed as if isolated from the rest, but they are to be interpreted with reference to the language surrounding and accompanying them—the context; and if there is any ambiguity or doubt as to their intended meaning, the context must be consulted as a means of removing the obscurity.[1]

When we speak of the "context," it is not meant merely that different words or clauses in the same sentence must be compared with each other, or successive sentences be read together. But in a wider sense, one section of a statute may stand as context to another, whether it immediately precedes or follows it or is more widely separated

[1] Blackwood v. Queen, L. R. 8 App. Cas. 82; United States v. Pirates, 5 Wheat. 184, 5 L. Ed. 64; Cooper v. Shaver, 101 Pa. 547; Ruggles v. Washington County, 3 Mo. 496; State ex rel. Harper v. Judge of Ninth Judicial District, 12 La. Ann. 777; McIntyre v. Ingraham, 35 Miss. 25; Crone v. State, 49 Ind. 538. In re Corby's Estate, 154 Mich. 353, 117 N. W. 906; State v. Missouri Pac. Ry. Co., 219 Mo. 156, 117 S. W. 1173; Mason v. Cranbury Tp., 68 N. J. Law, 149, 52 Atl. 568; Hidalgo County Drainage Dist. v. Davidson, 102 Tex 539, 120 S. W. 849; Ex parte Prosole (Nev.) 108 Pac. 630. "Ex antecedentibus et consequentibus fit optima interpretatio." 2 Co. Inst. 317. *See "Statutes," Dec. Dig. (Key No.) § 208; Cent. Dig. § 285.*

from it, provided it bears upon the same general subject-matter. Thus, for example, where one section of an act provides that a certain notice shall be published for ten days in succession, and another section provides that all notices under the act shall be published daily, Sundays excepted, these two sections must be read together, and they mean that the Sundays shall be included for enumeration, but not for publication.[2] If a statute, in one part of it, makes use of a word which is susceptible of two meanings, and in another place the same word is used in a single and definite sense, it is to be understood throughout in the latter sense, unless the object to which it applies, or the connection in which it stands, requires it to be differently understood in the two places.[3] It also follows that particular words ought not to be permitted to control the evident meaning of the context. Thus, in a case in Wisconsin, the word "jury" was construed, not according to its common-law signification, but as meaning a board of assessors, because the context made it evident that the latter was the meaning intended by the legislature.[4]

Further, in construing a statute, if there is a mistake apparent upon the face of the act, which may be corrected by referring to other language in the act itself—that is, the context—the mistake is not fatal, but may be corrected by the court.[5] Thus, where one word has been erroneously used in a statute for another, and the context affords the means for correction, the proper word will be deemed substituted.[6] So again, in order to give effect to the statute, courts will sometimes transpose sentences, so as to place them in their just connection with the context to which

[2] Taylor v. Palmer, 31 Cal. 240. *See "Statutes," Dec. Dig. (Key No.) § 208; Cent. Dig. § 285.*

[3] James v. Dubois, 16 N. J. Law, 285. *See "Statutes," Dec. Dig. (Key No.) § 208; Cent. Dig. § 285.*

[4] Williams v. McDonal, 4 Chand. 65. *See "Statutes," Dec. Dig. (Key No.) § 208; Cent. Dig. § 285.*

[5] Blanchard v. Sprague, 3 Sumn. 279, Fed. Cas. No. 1,517. *See "Statutes," Dec. Dig. (Key No.) § 208; Cent. Dig. § 285.*

[6] White v. Rio Grande Western Ry. Co., 25 Utah, 346, 71 Pac. 593. *See "Statutes," Dec. Dig. (Key No.) § 208; Cent. Dig. § 285.*

they relate.[7] And reference to the context is often necessary to avoid inconsistency or contradiction. Where the question concerns the interpretation of a particular clause, regard must first be had to the language of the clause itself, and then to other clauses in the same act, and that construction should be adopted which permits the whole act to stand consistently together, or which reduces the inconsistency to the smallest possible limits.[8]

Bi-Lingual Texts

The early laws of Louisiana were promulgated in both French and English; and it is held that, in construing those portions of the code of that state which re-enact provisions originally enacted in both languages, both texts may be taken into consideration to aid in ascertaining their meaning as parts of one law, and obscurities or ambiguities in the English text may be cleared up by referring to the greater precision of the French text. But if the two texts cannot be reconciled, it is the English which must prevail.[9]

TITLE

83. The title of a statute cannot control or vary the meaning of the enacting part, if the latter is plain and unambiguous. But if there is doubt or obscurity in the body of the act, the title may be consulted, as a guide to the probable meaning of the legislature, and should be accorded some weight in the interpretation. Especially is this the case in those states whose constitutions require the subject of the act to be expressed in the title.

[7] City of Detroit v. Chaffee, 70 Mich. 80, 37 N. W. 882. *See "Statutes," Dec. Dig. (Key No.) § 208; Cent. Dig. § 285.*

[8] United States v. Baltimore & O. S. W. R. Co., 159 Fed. 33, 86 C. C. A. 223. *See "Statutes," Dec. Dig. (Key No.) § 208; Cent. Dig. § 285.*

[9] Viterbo v. Friedlander, 120 U. S. 707, 7 Sup. Ct. 962, 30 L. Ed. 776; Hudson v. Grieve, 1 Mart. O. S. (La.) 143; State v. Dupuy, 2 Mart. O. S. (La.) 177; Parish of Lafourche v. Parish of Terrebonne, 34 La. Ann. 1230; State v. Ellis, 12 La. Ann. 390. *See "Statutes," Dec. Dig. (Key No.) §§ 188, 208; Cent. Dig. §§ 267, 285.*

In the civil law and the systems derived from it, such as the Scotch, the title of a statute was considered as an important aid in its interpretation, as showing directly the object of the legislative body. The title was called the "rubric" of the statute, because anciently printed in red letters, as distinguished from the ordinary black letters of the body of the act. Hence the phrase, in speaking of an argument, "a rubro ad nigrum." And it was a maxim that "nigrum nunquam excedere debet rubrum," the black should never go beyond the red; that is, the text of a statute should never be read in a sense more comprehensive than the rubric or title.[10]

The English judges, in most of the earlier cases, refused to take the titles of the statutes into consideration in aid of their interpretation. They held that reference to the title was not permissible, because it was not a part of the statute. "The title of an act of Parliament," said Chief Justice Holt, "is no part of the law or enacting part, no more than the title of a book is part of the book; for the title is not the law, but the name or description given to it by the makers." [11] So, also, Lord Hardwicke observed: "The title is no part of the act, and has often been determined not to be so, nor ought it to be taken into consideration in the construction of this act; for originally there were no titles to the acts, but only a petition and the king's answer; and the judges thereupon drew up the act into form and then added the title; and the title does not pass the same forms as the rest of the act, only the speaker, after the act is passed, mentions the title and puts the question upon it. Therefore the meaning of this act is not to be inferred from the title, but we must consider the act itself." [12] But this

[10] See Trayner, Lat. Max. 373; Wharton, Law Lex. voc. "Rubric." *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[11] Mills v. Wilkins, 6 Mod. 62. And see Chance v. Adams, 1 Ld. Raym. 77. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[12] Attorney General v. Lord Weymouth, 1 Ambl. 20. See, also, Hunter v. Nockolds, 1 Macn. & G. 640; King v. Williams, 1 W. Bl. 93; Jefferys v. Boosey, 4 H. L. Cas. 815, 982; Morant v. Taylor, L. R. 1 Ex. Div. 188. This doctrine was followed in a few American cases.

doctrine has been of late years silently abandoned. In the later volumes of reports we find many cases in which the title of a statute has been consulted as an aid in determining the meaning of the statute, and that, as a matter of course and without discussion.[13] And Huddleston, B., now says: "I think there is ample authority for saying that the title of an act may be looked at in order to remove any ambiguity in the words of the act." [14]

The earlier English doctrine on this point never gained any considerable recognition in this country. On the contrary, with us, it has been almost universally held that if the provisions contained in the body of the statute are expressed in ambiguous or doubtful language, or so as to be fairly susceptible of more than one interpretation, then it is permissible and proper to consider the title of the act, as a clue or guide to the intention and meaning of the legislature, and in this manner and to this extent it may be allowed to aid in the construction of the law.[15] But while

See State v. Welsh, 10 N. C. 404; Bradford v. Jones, 1 Md. 351; Cohen v. Barrett, 5 Cal. 195. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[13] Rawley v. Rawley, L. R. 1 Q. B. Div. 460; King v. Inhabitants of Gwenop, 3 Durn. & E. 133; King v. Cartwright, 4 Durn. & E. 490; King v. Wright, 1 Ad. & El. 434; Taylor v. Newman, 4 Best & S. 89. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[14] Coomber v. Justices of Berks, L. R. 9 Q. B. Div. 17, 33. And see Bentley v. Rotherham Board of Health, L. R. 4 Ch. Div. 588; Brett v. Brett, 3 Add. Eccl. 210. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[15] Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. 747, 44 L. Ed. 969; United States v. Palmer, 3 Wheat. 610, 631, 4 L. Ed. 471; Hadden v. The Collector, 5 Wall. 107, 18 L. Ed. 518; Meyer v. Western Car Co., 102 U. S. 1, 26 L. Ed. 59; Coosaw Min. Co. v. South Carolina ex rel. Tillman, 144 U. S. 550, 12 Sup. Ct. 689, 36 L. Ed. 537; United States v. Nakashima, 160 Fed. 842, 87 C. C. A. 646; United Shoe Machinery Co. v. Duplessis Shoe Machinery Co., 155 Fed. 842, 84 C. C. A. 76; Robinson v. United States, 42 Ct. Cl. 52; United States v. Union Pac. Ry. Co. (C. C.) 37 Fed. 551; Wilson v. Spaulding (C. C.) 19 Fed. 304; United States v. McArdle, 2 Sawy. 367, Fed. Cas. No. 15,653; Ogden v. Strong, 2 Paine, 584, Fed. Cas. No. 10,460; People ex rel. Flynn v. Abbott, 16 Cal. 358; Cohen v. Barrett, 5 Cal. 195; Wimberly v. Georgia Southern & F. Ry. Co., 5 Ga. App. 263, 63 S. E. 29; Van Walters v. Board of Children's Guard-

this much is admitted, it is also firmly held that the meaning apparent upon the face of the act, if clear, sensible, and free from ambiguity, cannot be modified or varied by any considerations drawn from the title. The court in Georgia, in an early case, remarked: "The great difficulty which has been felt in the minds of some in the construction of this statute, it is believed, has been in giving too much attention to the title and preamble, without carefully examining the enacting clause. The title of the act and the preamble are, strictly speaking, no parts of it. It is true they may assist in removing ambiguities where the intent is not plain, but where the words of the enacting clause are clear and positive, recourse must not be had to either of them." [16] It follows, therefore, that the title of a statute cannot be used to extend or to restrain any of the provisions contained in the body of the act; that is, cases which are clearly not within the contemplation of the enacting clause cannot be brought

ians of Marion County, 132 Ind. 567, 32 N. E. 568, 18 L. R. A. 431; City of Rushville v. Rushville Natural Gas Co., 132 Ind. 575, 28 N. E. 853, 15 L. R. A. 321; Kinnaird v. Commonwealth, 134 Ky. 575, 121 S. W. 489; State v. Bolden, 107 La. 116, 31 South. 393, 90 Am. St. Rep. 280; State v. Archer, 73 Md. 44, 20 Atl. 172; Bradford v. Jones, 1 Md. 351; Field v. Gooding, 106 Mass. 310; Nickerson v. Bowly, 8 Metc. (Mass.) 429; Commonwealth v. Bank of Mutual Redemption, 4 Allen (Mass.) 13; Allor v. Wayne Co., 43 Mich. 76, 4 N. W. 492; Torreyson v. Board of State Examiners, 7 Nev. 19; Bell v. Mayor, etc., of New York, 105 N. Y. 139, 11 N. E. 495; People v. O'Brien, 111 N. Y. 1, 18 N. E. 692, 2 L. R. A. 255, 7 Am. St. Rep. 684; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Burgett's Lessee v. Burgett, 1 Ohio, 469, 13 Am. Dec. 634; Hines v. Wilmington & W. R. Co., 95 N. C. 434, 59 Am. Rep. 250; Commonwealth ex rel. Alliance Petroleum & Coal Co. v. Slifer, 53 Pa. 71; Deddrick v. Wood, 15 Pa. 9; Moore v. Chartiers Valley Water Co., 216 Pa. 457, 65 Atl. 936; Kaufman v. Carter, 67 S. C. 312, 45 S. E. 211; State v. Stephenson, 2 Bailey (S. C.) 334; Commonwealth v. Gaines, 2 Va. Cas. 172; Blais v. Franklin (R. I.) 77 Atl. 172. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[16] Eastman v. McAlpin, 1 Ga. 157. And see In re Boston Mining & Milling Co., 51 Cal. 624; Cornell v. Coyne, 192 U. S. 418, 24 Sup. Ct. 383, 48 L. Ed. 504; United States v. McCrory, 119 Fed. 861, 56 C. C. A. 373; Forman v. Sewerage & Water Board of New Orleans, 119 La. 49, 43 South. 908; Territory ex rel. Jones v. Hopkins, 9 Okl. 133, 59 Pac. 976. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

within it merely because the title appears to include them, nor can cases which are plainly covered by the provisions of the statute be excluded from its operation on the mere ground that the title does not embrace them, unless, in the latter case, the statute fails to conform to the constitutional requirement of correspondence between the title and subject-matter.[17] Thus, where the words of the enacting clause of a statute, even a penal statute, are more general than the title, it is the enacting clause which must govern.[18] And, in particular, the title of a statute cannot be so read into the body of it as to supply the absence of a substantive provision essential to the conferring of power and authority.[19]

In further elucidation of the proper influence of the title in statutory construction, we shall now cite a few of the most conspicuous illustrations found in the reports. A recent case before the Supreme Court of the United States involved the interpretation of the "alien contract labor law." The title of this act is "An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its territories, and the District of Columbia." The enacting clause prohibits the importation of "any" foreigners under contract to perform "labor or service of any kind." The question was whether the statute applied to the case of a

[17] United States v. Fisher, 2 Cranch, 358, 386, 2 L. Ed. 304; Hadden v. The Collector, 5 Wall. 107, 18 L. Ed. 518; People ex rel. Flynn v. Abbott, 16 Cal. 358; State v. Cazeau, 8 La. Ann. 109; Auditor General v. Lake George & M. R. R. Co., 82 Mich. 426, 46 N. W. 730; Union S. B. Co. v. Erie & W. Transp. Co., 189 U. S. 363, 23 Sup. Ct. 504, 47 L. Ed. 854; The New York, 108 Fed. 102, 47 C. C. A. 232; Pickering v. Arrick, 9 Mackey (D. C.) 169; South Park Com'rs v. First Nat. Bank of Chicago, 177 Ill. 234, 52 N. E. 365; State v. Brugh, 5 Ind. App. 592, 32 N. E. 869; Field v. Gooding, 106 Mass. 313; Lorain Steel Co. v. Norfolk & B. St. R. Co., 187 Mass. 500, 73 N. E. 646; State v. Boasberg, 124 La. 289, 50 South. 162; Neumann v. City of New York, 137 App. Div. 55, 122 N. Y. Supp. 62. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[18] United States v. Briggs, 9 How. 351, 13 L. Ed. 170. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[19] Rider v. United States, 149 Fed. 164, 79 C. C. A. 112. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

foreign clergyman imported by an ecclesiastical society to serve as the rector of its church. The court said: "Obviously, the thought expressed in this [title] reaches only to the work of the manual laborer, as distinguished from that of the professional man. No one reading such a title would suppose that Congress had in its mind any purpose of staying the coming into this country of ministers of the gospel, or, indeed, of any class whose toil is that of the brain. The common understanding of the terms 'labor' and 'laborers' does not include preaching and preachers, and it is to be assumed that words and phrases are used in their ordinary meaning. So, whatever of light is thrown upon the statute by the language of the title indicates an exclusion from its penal provisions of all contracts for the employment of ministers, rectors, and pastors." On this and other grounds it was therefore held that the statute did not apply to the case at bar.[20] A leading English case involved the construction of "Lord Campbell's Act." The important question in the case was whether the jury, in giving damages apportioned to the injury resulting from the death of the decedent to the parties for whose benefit the action was brought, were confined to injuries capable of pecuniary estimation, or might add a solatium to the plaintiffs in respect to the mental sufferings occasioned by such death. On this question, the title of the act was consulted and was allowed some weight. It was "An act for compensating the families of persons killed by accidents," and from this Coleridge, J., inferred that it was not the design of Parliament to allow for solacing their wounded feelings, but only for compensating their pecuniary losses.[21] So again, where a statute "relative to the revenue of the state," the principal object of which is taxation, authorizes the treasurer to collect sums to be paid by curators of vacant successions, it will be construed to apply to sums which go into the treasury as a

[20] Church of Holy Trinity v. United States, 143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[21] Blake v. Midland Ry. Co., 18 Q. B. 93. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

revenue, and not those which, being deposited there for absent heirs, constitute no part of the revenue.[22]

But the reader should bear in mind that the argument drawn from the title is not entitled to the greatest weight in solving questions of statutory construction. It is a clue, rather than a criterion. It may aid in ascertaining the legislative intention, but does not fix it absolutely. It is not a rule that the construction of an ambiguous statute must be determined by the title; but the title may be called in aid. In point of fact, courts very seldom decide a question of statutory interpretation upon one consideration alone. They are wont to consider many things bearing upon the probable intention of the legislature, such as the relation of the statute to other existing legislation, the collocation and arrangement of the words, their character, as being technical or otherwise, the spirit and reason of the law and the scope and purpose of the act, the circumstances which led to its enactment or the evil which it was designed to remedy, the presumptions against unconstitutionality, injustice, and absurdity, executive and legislative constructions put upon the act, contemporary history and usage, and so on. If considerations drawn from all or many of these sources conduce to the support of one theory as to the meaning of the law, the fact that the consideration of the title leads to the same conclusion will have some persuasive force and will strengthen the argument. But if the inference drawn from the title contradicts the inference drawn from a consensus of other arguments (entitled to greater weight), it should not be allowed to prevail against them.

Effect of Title under Constitutional Provisions

Where the constitution of the state provides that each act of the legislature shall relate to but one subject, which shall be expressed in the title, the effect is to make the title a part of the enactment, so that any provisions of the act which lie outside the title will be rejected by the courts as unconstitutional, if that can be done without destroying

[22] Succession of D'Aquin, 9 La. Ann. 400. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

the entire law. In this case, it is very clear that the title may be resorted to as an aid in the interpretation of the statute, and that it will be entitled to greater weight than belongs to it in the absence of this constitutional provision; since it must be presumed that the mind of the legislature was directed to the title no less than to the provisions of the enacting clause.[23] As already indicated, the real reason why the title is not ordinarily entitled to very great weight is that it is not always or necessarily subject to the scrutiny and thought of the members of the legislature with the same care as the enacting clause, and hence may not truly disclose the meaning of the legislature and the purpose of the statute. But if the constitution requires it to express the subject of the act, this objection is removed. "The constitutional mandate that the object of every law shall be expressed in its title has given the title of an act a two-fold effect. It has added additional force to the title as an indication of legislative intent in aid of the construction of a statute couched in language of doubtful import, and it also operates as a constitutional limitation upon the enacting part of the law. The enacting part of a statute, however clearly expressed, can have no effect beyond the object expressed in the title. To maintain any part of such a statute, those portions not embraced within the purview of the title must be exscinded, and if the superaddition to the declared object cannot be separated and rejected, the

[23] People v. Wood, 71 N. Y. 371; Garrigus v. Board of Com'rs of Parke County, 39 Ind. 66; Nazro v. Merchants' Mut. Ins. Co. of Milwaukee, 14 Wis. 295; Stockton v. Central R. Co., 50 N. J. Eq. 52, 24 Atl. 964, 17 L. R. A. 97; Pennsylvania R. Co. v. Riblet, 66 Pa. 164, 5 Am. Rep. 360; Coosaw Min. Co. v. South Carolina ex rel. Tillman, 144 U. S. 550, 12 Sup. Ct. 689, 36 L. Ed. 537; Halderman's Appeal, 104 Pa. 251; Orvis v. Board of Park Com'rs of City of Des Moines, 88 Iowa, 674, 56 N. W. 294, 45 Am. St. Rep. 252; Reithmiller v. People, 44 Mich. 280, 6 N. W. 667; Dart v. Bagley, 110 Mo. 42, 19 S. W. 311; Glaser v. Rothschild, 221 Mo. 180, 120 S. W. 1, 22 L. R. A. (N. S.) 1045. See Hough v. Porter, 51 Or. 318, 98 Pac. 1083, where it is remarked that the title to an act of Congress is not required to embrace all its provisions, and therefore it is necessary to look to the body of the act to ascertain its intent. *See "Statutes," Dec. Dig. (Key No.) §§ 105–126, 211; Cent. Dig. §§ 117–194, 288.*

entire act must fail." [24] But it must not be supposed that, even under such a constitutional provision, the title of the statute may be considered, as an aid to its construction, unless there is need of interpretation by reason of obscurity or doubt in the body of the act. Says the Supreme Court of Indiana: "It is not said, by any writer that we know of, that the constitutional provisions in reference to the title of an act have so changed the rules of construction that the title may be looked to when the words of the statute are plain and unambiguous, and we do not think that such rules have been so changed. The only effect of such provisions in reference to titles of acts is to give greater weight and consideration to the title, in ascertaining the mind of the legislature, than was formerly given to titles, when the language of the act is ambiguous and doubtful." [25]

Joint Resolutions

A joint resolution of a legislative body may sometimes come before the courts for construction, and in this case the same rule applies with reference to consulting the title. Even if the constitution of the state does not require that a joint resolution shall have a title, yet it may imply that it shall, as, where it provides that the presiding officer of each house of the legislature shall sign all bills and joint resolutions "after the titles have been publicly read." And if a joint resolution has a title, which appears to have been adopted after due consideration, it may be referred to and considered by the court for the purpose of ascertaining the intention of the two houses in adopting the resolution, if there is doubt as to what that intention was.[26]

[24] Dobbins v. Northampton Tp., 50 N. J. Law, 496, 14 Atl. 587. *See "Statutes," Dec. Dig. (Key No.) §§ 105–126, 211; Cent. Dig. §§ 117–194, 288.*

[25] Garrigus v. Board of Com'rs of Parke County, 39 Ind. 66. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[26] Lovett v. Ferguson, 10 S. D. 44, 71 N. W. 765. *See "Statutes," Dec. Dig. (Key No.) §§ 211, 229; Cent. Dig. § 288.*

PREAMBLE

84. The preamble to a statute can neither expand nor control the scope and application of the enacting clause, when the latter is clear and explicit. But if the language of the body of the act is obscure or ambiguous, the preamble may be consulted, as an aid in determining the reason of the law and the object of the legislature, and thus arriving at the true construction of the terms employed.

The preamble to a statute is an introductory clause which sets forth the reasons which have led to the enactment, by reciting the state of affairs intended to be changed, the evils designed to be remedied, the advantages sought to be secured or promoted by the new law, or the doubts as to the prior state of the law which it is meant to remove. It is thus an exposition of the motives of the legislature, and in some sense a key to the meaning of the terms which they have employed to express their avowed intention. But it is not an essential part of the statute, and is by no means universally found in modern laws. It is in the form of a statement of facts, and is usually prefaced by the word "whereas." [27] In an ancient case, it was said by Dyer, J., that, the better to understand the purview, the preamble of the act is to be considered; that the preamble is a key to open the minds of the makers of the act and the mischiefs which they intend to remedy, the which the preamble recites.[28] And it is now settled by the authorities, without any important dissent, that when any doubt or ambiguity is found to exist in the enacting clause, it is permissible and

[27] "It is to the preamble, more especially, that we are to look for the reason or spirit of every statute, rehearsing, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed, by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the legislature in making and passing the statute itself." Brett v. Brett, 3 Add. Eccl. 210. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[28] Stowell v. Lord Zouch, Plowd. 369. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

proper to resort to the preamble, as a clue or guide to the true interpretation.[29] "In construing an act of Parliament," says Lord Blackburn, "where the intention of the legislature is declared by the preamble, we are to give effect to that preamble to this extent, namely, that it shows us what the legislature are intending; and if the words of enactment have a meaning which does not go beyond that preamble, or which may come up to the preamble, in either case we prefer that meaning to one showing an intention of the legislature which would not answer the purposes of the preamble or which would go beyond them." [30] It is sometimes said that the preamble is not a part of the statute. This is true in a measure. The preamble is no part of the enactment; it does not proprio vigore make the law; in itself it has no constraining force upon the citizen or subject. But nevertheless it is for some purposes, and to a limited extent, a part of the statute. More especially, if it be referred to in the enacting clause to identify the subject-matter of the law, or to explain the motive or the meaning of the legislature, it can be used for this purpose.[31]

But while the uses of the preamble in cases of doubt or ambiguity are admitted, it is equally well settled that if the enacting clause is clear, sensible, and explicit, it cannot be controlled in its operation, nor extended or abridged, by any considerations drawn from the preamble; for, in such cases, there is no room for construction and no need to resort to the preamble.[32] And an act which is clear and spe-

[29] Beard v. Rowan, 9 Pet. 301, 317, 9 L. Ed. 135; Mayor, etc., of City of Baltimore v. Moore, 6 Har. & J. (Md.) 375; Edwards v. Pope, 4 Ill. 465; Sussex Peerage Case, 11 Cl. & Fin. 85, 143; Price v. Forrest, 173 U. S. 410, 19 Sup. Ct. 434, 43 L. Ed. 749; Memphis St. Ry. Co. v. Byrne, 119 Tenn. 278, 104 S. W. 460. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[30] Overseers of West Ham v. Iles, L. R. 8 App. Cas. 386. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[31] Commonwealth, to Use of Allegheny City, v. Marshall, 69 Pa. 328. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[32] Yazoo & M. V. R. Co. v. Thomas, 132 U. S. 174, 10 Sup. Ct. 68, 33 L. Ed. 302; Emanuel v. Constable, 3 Russ. 436; Mason v. Armitage, 13 Ves. 25; United States v. Webster, Dav. 38, Fed. Cas. No. 16,658; James v. Dubois, 16 N. J. Law, 285; Laidler v. Young's

cific in its enacting part will not be rendered inoperative or void by a defective or repugnant preamble.[33] Moreover, it should be remembered that the preamble to a statute does not invariably recite the real reason for its enactment. Its statements of facts are neither infallible nor conclusive.[34] This should operate as a restraint upon the disposition to attach too great weight to the preamble as evidencing the purpose and intention of the lawmakers. Barrington, in his Observations on the Statutes, remarks that "it is frequently said that the preamble to a statute is the best key to its construction; it often, however, dwells upon a pretense, which was not the real occasion of the law, when, perhaps, the proposer had very different views in contemplation. The most common recital for the introduction of any new regulation is to set forth that 'doubts have arisen at common law,' which frequently never existed; and such preambles have therefore much weakened the force of the common law in several instances." [35]

There are two classes of cases in which a conflict may arise between the preamble of a statute and its enacting clause, and in which, therefore, it is necessary to determine the force of the preamble in fixing the construction of the

Lessee, 2 Har. & J. (Md.) 69; Blue v. McDuffie, 44 N. C. 131; Bynum v. Clark, 3 McCord (S. C.) 298, 15 Am. Dec. 633; Jackson ex dem. Woodruff v. Gilchrist, 15 Johns. (N. Y.) 89; Lucas v. McBlair, 12 Gill & J. (Md.) 1; Tripp v. Goff, 15 R. I. 299, 3 Atl. 591; Eastman v. McAlpin, 1 Ga. 157. And see Neumann v. City of New York, 137 App. Div. 55, 122 N. Y. Supp. 62. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[33] Erie & N. E. R. Co. v. Casey, 26 Pa. 287, 323; Salters' Co. v. Jay, 3 Q. B. 109. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[34] Thus, in determining the constitutional validity of an act purporting to be enacted in the exercise of the police power of the state, a recital in the preamble that it is intended for the preservation of the public health is not conclusive on the courts. Priewe v. Wisconsin State Land & Improvement Co., 103 Wis. 537, 79 N. W. 780, 74 Am. St. Rep. 904. But see Ex parte Fedderwitz, 130 Cal. xviii, 62 Pac. 935, as to a recital in the preamble of a mere matter of fact, such as the population of a city. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[35] Barringt. Obs. Stat. (4th Ed.) 394.

law. The first case is where the words of the enacting clause are more broad and comprehensive than the words of the preamble. The second case is where the words of the preamble are more broad and comprehensive than the words of the enacting clause. In the first place, it is well settled, by the decided preponderance of authority, that general words in the body of the statute, if free from ambiguity, are not to be restrained or narrowed down by particular, or less comprehensive, recitals in the preamble.[36] This is the general rule. It is, perhaps, subject to exceptions; but such exceptions always arise out of the language of the particular act or the consequences which would attend its construction in a particular manner. Thus, it was said by Lord Ellenborough: "It cannot by any means be regarded as a universal rule that large and comprehensive words in the enacting clause of a statute are to be restrained by the preamble. In a vast number of acts of Parliament, although a particular mischief is recited in the preamble, yet the legislative provisions extend far beyond the mischief recited; and whether the words shall be restrained or not must depend on a fair exposition of the particular statute in each particular case, not upon any universal rule of construction." [37] And in another case, Lord Chancellor Cowper declared: "I can by no means allow of the notion that the

[36] Fellowes v. Clay, 4 Q. B. 313; Mace v. Cammel, Lofft, 782; Colehan v. Cooke, Willes, 393; Holbrook v. Holbrook, 1 Pick. (Mass.) 248; Treasurers of State v. Lang, 2 Bailey (S. C.) 430; Bywater v. Brandling, 7 Barn. & C. 643; Salkeld v. Johnson, 2 Exch. 256. It is not infrequent for the legislature, in the preamble to a statute, to recite a particular mischief, while the legislative provisions extend far beyond the mischief recited. The evil recited is but the motive for the legislature, and if, on a review of the whole act, a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it, notwithstanding the less extensive import of the preamble. Ohio Oil Co. v. State, 150 Ind. 694, 49 N. E. 1107 (affirmed 177 U. S. 212, 20 Sup. Ct. 585, 44 L. Ed. 740); State v. Ohio Oil Co., 150 Ind. 21, 49 N. E. 809, 47 L. R. A. 627; Lippincott Glass Co. v. Ohio Oil Co., 150 Ind. 695, 49 N. E. 1106. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[37] King v. Peirce, 3 Maule & S. 62. See, also, King v. Athos, 8 Mod. 136; Trueman v. Lambert, 4 Maule & S. 234. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

preamble shall restrain the operation of the enacting clause, and that, because the preamble is too narrow or defective, therefore the enacting clause, which has general words, shall be restrained from its full latitude and from doing that good which the words would otherwise, and of themselves, import." [38] It appears, however, that if the refusal to narrow down the general words of the enacting part of the law to a scope commensurate with the particular recitals of the preamble would lead to absurd or inconvenient consequences, or would result in harm or mischief in particular cases, then the generality of the enacting clause should be restrained by the preamble.[39]

In the second place, detailed and specific provisions in the body of the statute cannot be expanded beyond their proper scope by the use of more general expressions in the preamble. Thus, where the preamble refers to several matters or things, and only some of these, not all, are expressly mentioned in the enacting part of the statute, its terms cannot be extended to those things not provided for, merely in virtue of the larger recital in the preamble.[40] For instance, in a case in Virginia, it was said: "The enacting clauses of the statute making provision only with regard to coupons

[38] Copeman v. Gallant, 1 P. Wms. 314. "The true meaning of the statute is generally and properly to be sought from the purview, providing part, or body of the act. The preamble of a statute is no more than a recital of some inconveniences, which by no means excludes any others, for which a remedy is given by the enacting part of the statute. Great doubts have existed how far the preamble should control the enacting part of the statute; but abundant cases have established that where the words in the enacting part are strong enough to take in the mischief intended to be prevented, they shall be extended for that purpose, though the preamble does not warrant it; in other words, the enacting part of the statute may extend the act beyond the preamble." Potter's Dwarris on Stat. 109. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[39] Seidenbender v. Charles' Adm'rs, 4 Serg. & R. (Pa.) 151, 166, 8 Am. Dec. 682; Ryall v. Rolle, 1 Atk. 165. See, also, Halton v. Cave, 1 B. & Ad. 538. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

[40] Lackland v. Walker, 151 Mo. 210, 52 S. W. 414; Commonwealth v. Smith, 76 Va. 477; Slack v. Jacob, 8 W. Va. 612. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

detached from bonds of the commonwealth issued under the act of 1871, and making no provision with regard to coupons detached from bonds issued under the act of 1879, the circumstance that the latter are mentioned in the preamble, and though the representation, by way of recital, of a state of things as inducements to the act which follows might be applied to the latter as well as the former, the latter not being within the enacting clauses, to bring them within the purview of the act would be to go beyond what the legislature did, and to give to the preamble the province of enlarging and extending the act of legislation beyond the purview of the statute, and of conferring powers per se, which is warranted by no decision that has ever been made, but is contrary to the settled doctrine on the subject, as declared in judicial decisions and maintained by the most eminent sages of the law in their published works. It would be to assume legislative power by the court." [41]

CHAPTER AND SECTION HEADINGS

85. Headings prefixed to the titles, chapters, and sections of a statute or code may be consulted in aid of the interpretation, in case of doubt or ambiguity; but inferences drawn from such headings are entitled to very little weight, and they can never control the plain terms of the enacting clauses.

The reason commonly given for this rule is that such headings and subtitles are not a part of the law, and not the subject of deliberation and enactment on the part of the legislative body, but are inserted by a compiler or editor for mere purposes of reference or classification, and hence cannot be taken as furnishing any indication of the meaning and intent of the legislature in enacting particular clauses of the statute, nor anything more than the personal opinion of their unknown author. This is probably true

[41] Commonwealth v. Smith, 76 Va. 477; Wilson v. Knubley, 7 East, 128. *See "Statutes," Dec. Dig. (Key No.) § 210; Cent. Dig. § 287.*

for the most part in regard to codes and compilations or revisions of statutes. But in relation to most modern statutes, when they are of such length or complexity as to require division into titles, chapters, and sections, it is commonly the case that appropriate headings are inserted by the author of the bill, that they may or may not undergo change in committees or on the floor of the house, and that, the statute being enacted as a whole, such headings are enacted with and as a part of it. In such cases, therefore, it would appear that such indications of the legislative meaning are entitled to at least as much consideration as the general title of a statute, when the endeavor is made to interpret an obscure or ambiguous provision. In a case in Kansas, it is said that where a statute is divided into separate subjects or articles, having appropriate headings, it must be presumed and held that the provisions of each article are controlling upon the subject thereof and operate as a general rule for settling such questions as are embraced therein.[42] But the rule accepted by the most of the authorities is that if the chapter or section heading has been inserted merely for convenience of reference, and not as an integral part of the statute, it should not be allowed to control the interpretation.[43] And while it is not improper to refer to such headings, when it becomes necessary to ascertain the true meaning of ambiguous or doubtful expressions found in the body of the act,[44] yet such a resort is neither necessary nor permissible when the language of the enacting part is plain and clear. Thus, in an English case, where the section of the statute which was in question was prefaced by a short sentence which might be taken as a kind of preamble or section heading, it was said by Kelly, C. B.: "Al-

[42] Griffith v. Carter, 8 Kan. 565. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[43] Union Steamship Co. v. Melbourne Harbor Com'rs, L. R. 9 App. Cas. 365. And see Chesapeake & O. Ry. Co. v. Pew, 109 Va. 288, 64 S. E. 35; People v. Fishman, 64 Misc. Rep. 256, 119 N. Y. Supp. 89; State ex rel. Bellingham Bay Imp. Co. v. Bridges, 19 Wash. 431, 53 Pac. 545; State v. Johnson (S. D.) 124 N. W. 847. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[44] Hammersmith & C. Ry. Co. v. Brand, L. R. 4 H. L. 171, 203. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

though we may refer to the introductory words of the section to put a construction upon a doubtful part of the statute, yet if the language of the enactment is clear, and includes in express terms such an instrument as this [the deed in controversy], we should not be justified in limiting that sense by the introductory words." [45]

In some few of the states it is held that when a code or revision of the statutes is passed or adopted by the legislature at one time and as one statute, the headings to the parts, titles, chapters, and sections are also enacted as and for a part of the law, and hence they are not to be considered, in construction, as the titles of ordinary statutes, but as parts of the act, defining and limiting its provisions.[46] But in others of the states which have adopted codes, very

[45] Latham v. Lafone, L. R. 2 Ex. 115. But there are some English cases in which considerable weight has been given to the section headings, as an indication of the legislative intent. Thus, in Shiel v. Mayor, etc., of Sunderland, 6 Hurl. & N. 796, it appeared that an ordinance of a local board of health was headed "width and level of new streets." It provided for the width of new streets, dividing them into front streets, cross streets, and back streets. In a subsequent paragraph it provided that "no dwelling house shall be built immediately adjoining any back street without the special permission of the board." It was held that this provision applied only to new back streets, and not to a new building in an old back street. Again, the British statute called the "Lands Clauses Consolidation Act" is divided into different subjects by headings, which are accompanied by corresponding words in the margin. One of these divisions is marked by the words "intersected lands" in the margin. In the body of the statute is a line containing these words as a heading, "And with respect to small portions of intersected land, be it enacted as follows." Then follow two sections, the first of which (section 93 of the act) begins thus: "If any lands not being situated in a town," etc. The other section (section 94 of the act) begins: "If any such land shall be so cut through and divided," etc. It was contended, in the case of the Eastern Counties, etc., R. Co. v. Marriage, 9 H. L. Cas. 32, that the rule that a relative term refers to the next preceding antecedent should here be applied. But it was held, principally in view of the headings, that the word "such" was not confined to "lands not being situate in a town" as described in section 93, but applied to the words in the general heading "small portions of intersected land." *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[46] People v. Molyneux, 40 N. Y. 113; Id., 53 Barb. (N. Y.) 9; Barnes

much less reliance is placed upon these headings. The decisions in these states proceed upon the reasonable ground that the actual worth of chapter and section headings as guides to the meaning of the law depends entirely upon their accuracy and the precision with which they are employed; if they are found, in numerous instances, to be misplaced or inaccurate, their value throughout the whole code or revision is depreciated. Thus, in Georgia, it is held that an act providing that judgments shall become dormant, in certain circumstances, is not to be read and construed as a "statute of limitations" merely because it appears in a chapter of the code bearing that heading. The court said that the classifications of the code were not law, nor were they at all accurate, and the only inference that could be drawn from the position of the act in question was that it was the opinion of the codifiers that it might fairly be classed as a statute of limitations.[47] So also in Maryland, "in arriving at the true construction of any particular section of the code, very little reliance can be placed upon the heading under which it may be found. There are many instances in which sections relating to different subjects are placed under the same head, and in some cases such sections are found in the same article. * * * In short, we have found that the only satisfactory and safe rule of construction to be adopted is to read and construe together all sections of the code relating to the same subject-matter, without reference to the particular article or heading under which they may be placed." [48] In the Revised Statutes of the United States, it is provided that "the arrangement and classification of the several sections of the revision have been made for the purpose of more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by

v. Jones, 51 Cal. 303. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[47] Battle v. Shivers, 39 Ga. 405. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[48] State v. Popp, 45 Md. 432. And see Huff v. Alsup, 64 Mo. 51. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

reason of the title under which any particular section is placed." [49]

Marginal Notes

In the English statutes, the marginal notes are brief abstracts of the matter to which the section relates, or a word or phrase descriptive of the subject-matter, much resembling section headings. In American statutes, marginal notes, when used at all, are of the same character, or, in codes and revisions, they are used for the purpose of referring to the statute compiled, the place where it may be found in full, and the date of its enactment. The rule is settled, both in England and in this country, that such notes are not available as a means of determining the interpretation to be put upon the body of the statute. The marginal note is no part of the statute, not being considered or passed upon by the legislature. It is nothing more than an abstract of the clause intended to catch the eye, and inserted merely to facilitate reference to the statute and promote the convenience of the reader in examining it. Nor are such notes always accurate or reliable. Hence they should never be allowed to control the construction of the statute, and it is doubtful whether they may be at all considered for that purpose.[50]

[49] Rev. St. § 5600 (U. S. Comp. St. 1901, p. 3751). See United States v. Fehrenback, 2 Woods, 175, Fed. Cas. No. 15,083. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

[50] Attorney General v. Great Eastern Ry. Co., L. R. 11 Ch. Div. 449; Sutton v. Sutton, L. R. 22 Ch. Div. 511; Birtwhistle v. Vardill, 7 Cl. & Fin. 895, 929; Claydon v. Green, L. R. 3 C. P. 511; Cook v. Federal Life Ass'n, 74 Iowa, 746, 35 N. W. 500; Nicholson v. Mobile & M. R. Co., 49 Ala. 205; Mackey v. Miller, 126 Fed. 161, 62 C. C. A. 139; Commonwealth Mut. Fire Ins. Co. v. Place, 21 R. I. 248, 43 Atl. 68. But compare Bettencourt v. Sheehy, 157 Cal. 698, 109 Pac. 89; King v. Inhabitants of Milverton, 5 Ad. & El. 841, 854. *See "Statutes," Dec. Dig. (Key No.) § 211; Cent. Dig. § 288.*

PUNCTUATION

86. The punctuation marks in the published copies of an act are not allowed to control, enlarge, or restrict the plain and evident meaning of the legislature as disclosed by the language employed.

87. If there is no doubt as to the meaning of the legislature, other than such as is created by the defective or erroneous punctuation of the statute, the courts will disregard the punctuation marks and read the statute as if correctly punctuated.

88. If the statute is equally open to two constructions, and there is nothing to show which of them was intended by the legislature, except the punctuation, and if the punctuation would support one of such constructions but would be inconsistent with the other, the punctuation will govern.

The British statutes, on the original rolls of Parliament, are not punctuated at all, and although more or less marks of punctuation appear in the printed transcripts of the acts of Parliament, they are not inserted by authority and are not regarded as an essential part of the law. In the legislative bodies of this country, the punctuation marks are usually inserted, with a greater or less approach to correctness, by the member who drafts and introduces the bill, are sometimes changed by the engrossing clerks, and are frequently reformed by the printer. They very seldom receive the attentive consideration of the legislature, and no great importance is ever attached to them during the progress of the bill through the house. For this reason it has come to be recognized as a settled legal doctrine that the punctuation marks are no part of the statute.[51] Hence, in the matter of interpretation, they are never allowed a controlling force as against the obvious meaning of the act.

[51] But in New York the punctuation is a part of the statute as passed. Tyrrell v. City of New York, 159 N. Y. 239, 53 N. E. 1111. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

The words used by the legislature to express its meaning are first to be considered, and if these convey a clear, definite, and sensible meaning, without any doubt or ambiguity, their significance cannot be enlarged, restricted, or perverted by any considerations flowing merely from the character and position of the stops.[52] "In the interpretation of written instruments, very little consideration is given by the courts to the punctuation, and it is never allowed to interfere with or control the sense and meaning of the language used. The words employed must be given their common and natural effect, regardless of the punctuation or grammatical construction." And considerations based on the punctuation alone must never be allowed to "violate the well-settled rule that, where it is possible, effect must be given to every sentence, phrase, and word, and the parts must be compared and considered with reference to each other." [53] "Punctuation," says Baldwin, J., "is a most fallible standard by which to interpret a writing; it may be resorted to when all other means fail; but the court will first take the instrument by its four corners, in order to ascertain its true meaning; if that is apparent on judicially inspecting the whole, the punctuation will not be suffered to change it." [54]

[52] Hammock v. Farmers' Loan & T. Co., 105 U. S. 77, 26 L. Ed. 1111; Stephenson v. Taylor, 1 Best & S. 101; Queen v. Oldham, 21 L. J. M. C. 134; State v. McNally, 34 Me. 210, 56 Am. Dec. 650; In re Olmsted, 17 Abb. N. C. (N. Y.) 320; Murray v. State, 21 Tex. App. 620, 2 S. W. 757, 57 Am. Rep. 623; Morrill v. State, 38 Wis. 428, 20 Am. Rep. 12; Baker v. Payne, 22 Or. 335, 29 Pac. 787; Cushing v. Worrick, 9 Gray (Mass.) 382; Martin v. Gleason, 139 Mass. 183, 29 N. E. 664; Archer v. Ellison, 28 S. C. 238, 5 S. E. 713; United States v. York (C. C.) 131 Fed. 323; Taylor v. Inhabitants of Town of Caribou, 102 Me. 401, 67 Atl. 2; State ex rel. v. Banfield, 43 Or. 287, 72 Pac. 1093; Black v. Scott, 2 Brock. 325, Fed. Cas. No. 1,464. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[53] O'Brien v. Brice, 21 W. Va. 704; Commonwealth v. Taylor, 159 Pa. 451, 28 Atl. 348. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[54] Ewing v. Burnet, 11 Pet. 41, 9 L. Ed. 624; Albright v. Payne, 43 Ohio St. 8, 1 N. E. 16. *See "Statutes," Dec. Dig. (Key No.) § 200, Cent. Dig. § 278.*

If, therefore, the words of the act, taken in themselves alone, or compared with the context and read in the light of the spirit and reason of the whole act, convey a precise and single meaning, they are not to be affected by the want of proper punctuation or by the insertion of incorrect or misplaced marks. In that event, the court will disregard the existing punctuation, supply such stops as may be missing, transpose those which are erroneously placed, eliminate those which are superfluous, reform such as are incorrectly used, and read the act as if correctly punctuated.[55] For instance, where effect may be given to all the words of a statute by transposing a comma, the alternative being the disregard of a material or significant word, or grossly straining and perverting it, the former course is to be adopted.[56] So, to take another illustration, an act of Congress required a stamp to be placed upon every "memorandum, check, receipt, or other written or printed evidence of an amount of money to be paid." The court, considering the act as a whole, and finding a change of punctuation necessary to make the statute harmonious and sensible and to avoid useless repetitions, decided that the comma after "memoran-

[55] United States v. Lacher, 134 U. S. 624, 10 Sup. Ct. 625, 33 L. Ed. 1080; Doe v. Martin, 4 Durn. & E. 39, 65; Gyger's Estate, 65 Pa. 311; Hamilton v. The R. B. Hamilton, 16 Ohio St. 429; Allen v. Russell, 39 Ohio St. 336; Shriedley v. State, 23 Ohio St. 130; Chicago, M. & St. P. Ry. Co. v. Voelker, 129 Fed. 522, 65 C. C. A. 226, 70 L. R. A. 264; Lorenz v. United States, 24 App. D. C. 337; Union Refrigerator Transit Co. v. Lynch, 18 Utah, 378, 55 Pac. 639, 48 L. R. A. 790; State v. Deuel, 63 Kan. 811, 66 Pac. 1037; Manger v. Board of State Medical Examiners, 90 Md. 659, 45 Atl. 891; Browne v. Turner, 174 Mass. 150, 54 N. E. 510; Stiles v. City of Guthrie, 3 Okl. 26, 41 Pac. 383; State v. Pilgrim, 17 Mont. 311, 42 Pac. 856; Hammock v. Farmers' Loan & Trust Co., 105 U. S. 77, 26 L. Ed. 1111; United States v. Oregon & C. R. Co., 164 U. S. 526, 17 Sup. Ct. 165, 41 L. Ed. 541; Ford v. Delta & P. Land Co., 164 U. S. 662, 17 Sup. Ct. 230, 41 L. Ed. 590; Stephens v. Cherokee Nation, 174 U. S. 445, 19 Sup. Ct. 722, 43 L. Ed. 1041; United States v. Voorhees (C. C.) 9 Fed. 143; Cushing v. Worrick, 9 Gray (Mass.) 382; Martin v. Gleason, 139 Mass. 183, 29 N. E. 664; McPhail v. Gerry, 55 Vt. 174. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[56] Commonwealth v. Shopp, 1 Woodw. Dec. (Pa.) 123; Albright v. Payne, 43 Ohio St. 8, 1 N. E. 16. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

dum" must have been erroneously printed there instead of a hyphen, so that the section should be construed as if it read "memorandum-check, receipt," etc.[57] In an English case, a question arose upon the interpretation of an act of Parliament which provided that it should not repeal any statute then in force "concerning aliens duties customs and impositions." The question was whether this act should be read as if the word "aliens" were followed by a comma or by an apostrophe. It is apparent that this would make an important difference in its meaning. The Master of the Rolls compared two printed editions of the act, and found that they differed in the punctuation at this point. The original roll of Parliament had no punctuation at all. He therefore considered the general spirit and object of the act, and found that its intention was to leave undisturbed the laws relating to taxes. Hence he concluded that it should be read "aliens' duties, customs, and impositions." [58] Especially is the existing punctuation to be disregarded or reformed where the marks, as they stand, would make the statute absurd or unmeaning, but a change of the punctuation would render it clear and intelligible.[59]

Nevertheless, punctuation often determines the meaning of a sentence.[60] It is entirely possible to select words which are clear and specific in themselves, and place them in such an order and arrangement in a sentence that it shall be equally open to two constructions, each of which is perfectly consistent with the rules of grammar and the ordinary use of language. In such a case, the choice between the two constructions cannot be determined in any other way than by the marks of punctuation which may be inserted. And if the punctuation, as it stands in the statute,

[57] United States v. Isham, 17 Wall. 496, 21 L. Ed. 728. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[58] Barrow v. Wadkin, 24 Beav. 327. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[59] Bradstreet Co. v. Gill, 72 Tex. 115, 9 S. W. 753, 2 L. R. A. 405, 13 Am. St. Rep. 768; Randolph v. Bayue, 44 Cal. 366. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[60] Squire's Case, 12 Abb. Prac. (N. Y.) 38. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

is such as will enable the language of the act to bear an interpretation making the whole instrument rational and self-consistent, it must be considered as much as the language itself.[61] And it may, in some cases, furnish a guide to the legislative meaning which is strong enough to supplant the application of the ordinary rules of grammar. Thus, the grammatical rule that where there are two words in a clause, each capable of being an antecedent to the following relative pronoun, that pronoun is to be taken as referring to the latter, will not be applied where the punctuation shows that the legislature intended the pronoun to refer to such antecedents jointly.[62]

Hence, while it is often and perhaps ordinarily true, as frequently asserted by the courts, that punctuation is a weak and unreliable guide in questions of interpretation, it does not follow that it is to be disregarded altogether. While it is never permissible to make the construction depend upon the punctuation in cases where there is no real ambiguity other than that which the punctuation itself creates, and in such cases it will not be allowed to confuse a construction otherwise clear,[63] yet in other cases it may serve as an indication of the legislative intention, and may even, under peculiar circumstances, determine the question.[64] "Punctuation is the least reliable guide to the construction of a statute, but cannot properly be said to be

[61] Blood v. Beal, 100 Me. 30, 60 Atl. 427; United States v. Three Railroad Cars, 1 Abb. 196, Fed. Cas. No. 16,513; Greenough v. Phœnix Ins. Co. of Hartford, 206 Mass. 247, 92 N. E. 447. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[62] Seiler v. State ex rel. Board of Com'rs of De Kalb County, 160 Ind. 605, 67 N. E. 448. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[63] Weatherly v. Mister, 39 Md. 620; Pancoast v. Ruffin, 1 Ohio, 381; Price v. Price, 10 Ohio St. 316. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[64] United States v. Three Railroad Cars, 1 Abb. 196, Fed. Cas. No. 16,513; Commonwealth v. Kelley, 177 Mass. 221, 58 N. E. 691; Starrett v. McKim, 90 Ark. 520, 119 S. W. 824; MacFarland v. Elverson, 32 App. D. C. 81; Withers v. Commonwealth, 109 Va. 837, 65 S. E. 16; Greenough v. Phœnix Ins. Co. of Hartford, 206 Mass. 247, 92 N. E. 447. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

without any force. In itself it is ordinarily insufficient to fix the sense of a statute where that is disputable, especially when the question is one of the force of a comma; but when the punctuation is strictly consistent with one of two senses, equally grammatical, and inconsistent with the other, it should be allowed the force of opening the question of construction to receiving aid from the context and from the nature of the purpose the statute has in view. It is certainly competent to cancel the equally weak argument that arises from the relative position in the sentence of the two clauses." [65] And if the two constructions between which the choice is to be made are equally consistent with the rules of grammar and the ordinary meaning of the words, and if no light upon the meaning of the legislature can be derived from the context or from admissible extraneous considerations, then the construction must be governed by the punctuation alone. For example, an act of Congress prescribes fees for witnesses in the following terms: "For each day's attendance in court, or before any officer pursuant to law, one dollar and fifty cents." And it is held that the phrase "pursuant to law," on account of the punctuation, applies only to the attendance of witnesses before commissioners.[66] Cases of this kind not infrequently arise in the construction of the tariff acts of Congress and it has more than once been found necessary to pass special acts to correct the punctuation of such statutes. One of the paragraphs of the tariff act of 1890 reads as follows: "Chocolate, (other than chocolate confectionery, and chocolate commercially known as 'sweetened chocolate') two cents per pound." In a case involving the construction of this clause, it was contended that the parenthesis should have ended after the word "confectionery," and this argument was supported by the official statements of members of the conference committees and by the history of the bill and

[65] Caston v. Brock, 14 S. C. 104. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[66] Cummings v. Akron Cement & Plaster Co., 6 Blatchf. 509, Fed. Cas. No. 3,473. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

its amendments. But since the attention of Congress had been called to the mistake, and no action was taken thereon, the court held that it was not authorized, when construing the statute, to change the punctuation actually made, in the absence of other evidence that the intent of the statute required such change.[67]

INTERPRETATION CLAUSE

89. The definitions and rules of construction contained in an interpretation clause are a part of the law and are binding on the courts; but they will not be extended beyond their necessary import, nor will they be allowed to defeat the intention of the legislature otherwise clearly manifested in the act.

An "interpretation clause" is a section sometimes incorporated in a statute, prescribing rules for its construction, or defining the meaning to be attached to certain words and phrases frequently occurring in the other parts of the act. When a statute contains such a clause, the courts are bound to adopt the construction which it prescribes, and to understand the words in the sense in which they are therein defined, although otherwise the language might have been held to mean something different.[68] A definition incorporated in a statute is as much a part of the act as any other

[67] In re Schilling, 53 Fed. 81, 3 C. C. A. 440. *See "Statutes," Dec. Dig. (Key No.) § 200; Cent. Dig. § 278.*

[68] Smith v. State, 28 Ind. 321; Jones v. Surprise, 64 N. H. 243, 9 Atl. 384; State ex rel. Exchange Bank v. Allison, 155 Mo. 325, 56 S. W. 467; Chicago & E. I. R. Co. v. State ex rel. Ketcham, 153 Ind. 134, 51 N. E. 924; State ex rel. Michener v. Harrison, 116 Ind. 300, 19 N. E. 146; Snyder v. Compton, 87 Tex. 374, 28 S. W. 1061; State v. Fargo Bottling Works Co. (N. D.) 124 N. W. 387, 26 L. R. A. (N. S.) 872; Piper v. Boston & M. R. R. (N. H.) 75 Atl. 1041. Where a statute declaring the construction to be placed on a prior statute is contradictory to the terms of the act construed, the construing statute must be taken as a new enactment, changing the prior law. McCleary v. Babcock, 169 Ind. 228, 82 N. E. 453. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

portion. It is imperative. "The right of the legislature to prescribe the legal definitions of its own language must be conceded." [69] "The right of the legislature enacting a law to say in the body of the act what the language used shall, as there used, mean, and what shall be the legal effect and operation of the law, is undoubted. If they have mistaken the meaning of the words they have used, when read in their ordinary and popular sense, or as legally and technically understood, still they may, in terms, declare what the law shall be for the future, under and by virtue of the terms employed." [70] An interpretation clause may have the effect to repeal one or more of the settled and accepted rules of statutory construction, either with reference to the particular act in which it is found, or, if inserted in a code or body of compiled laws, generally for the entire statute law of the state. Thus, in California, the fourth section of the Penal Code provides that "the rule of the common law that penal statutes are to be strictly construed has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice." [71]

But interpretation clauses, more especially in England, have been regarded with great disfavor, and the courts have manifested a disposition to hold them down to the narrowest possible effects. Says Wilberforce: "Severe censures have been passed upon this section [clause] by some of the judges. It has been said that a very strict construction should be placed upon a section which declares that one thing shall mean another; that interpretation clauses embarrass rather than assist the courts in their decisions, and frequently do a great deal of harm by giving an unnatural sense to words which are afterwards used in a natural sense without the distinction being noticed." [72] In the first place,

[69] Herold v. State, 21 Neb. 50, 31 N. W. 258. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[70] Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53, 62. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[71] People v. Soto, 49 Cal. 67. *See "Statutes," Dec. Dig. (Key No.) §§ 178, 179; Cent. Dig. §§ 257, 258.*

[72] Wilberforce, Stat. Law, 296. And see Lindsay v. Cundy, L. R.

such clauses are strictly construed and not extended a whit beyond their necessary import. Thus, the interpretation clause in an English statute provided that the word "justice" should mean "a justice acting for the county in which the matter requiring the cognizance of such justice shall arise, and who shall not be interested in the matter." But it was held that the last clause was merely declaratory of the common law, and was inserted only out of abundant caution, and that it was not intended to withhold jurisdiction from a justice who was interested in the matter, where both parties, knowing his interest, waived objections on that ground.[73] Again, an act of the legislature directing that all statutes made for the suppression of gaming shall be construed remedially, passed when every species of gaming then punishable by law was treated as a misdemeanor, will not be applied to statutes subsequently passed making certain kinds of gaming felonies and infamous.[74] Further, where an interpretation clause provides that a certain word shall include certain things, this does not necessarily exclude all other things beside those enumerated. The object of such a definition is to give to the word a more extensive signification than it would otherwise bear; but if there be any other thing, not mentioned, to which the word would ordinarily be applied with propriety, it is not to be exclud-

1 Q. B. Div. 348, 358. In Queen v. Justices of Cambridgeshire, 7 Ad. & El. 480, Lord Denman observed: "We cannot refrain from expressing a serious doubt whether interpretation clauses of so extensive a range will not rather embarrass the courts in their decision than afford that assistance which they contemplate. For the principles on which they themselves are to be interpreted may become matter of controversy, and the application of them to particular cases may give rise to endless doubts." See, also, Allsopp v. Day, 7 Hurl. & N. 457. In Queen v. Pearce, L. R. 5 Q. B. Div. 386, Lush, J., said: "I think an interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain." *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[73] Wakefield Local Board of Health v. West Riding & G. Ry. Co., L. R. 1 Q. B. 84. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[74] McGowan v. State, 9 Yerg. (Tenn.) 184. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

ed.[75] "An interpretation clause is not meant to prevent the word from receiving its ordinary, popular, and natural sense, whenever that would be properly applicable, but to enable the word, as used in the act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable."[76] Again, if the definitions contained in the interpretation clause are at variance with the intention of the legislature, as plainly manifested by the language employed in a particular part of the statute, it is that intention which must prevail, and the official definitions which must give way. On this point, an English Vice Chancellor is reported as saying: "With regard to all these interpretation clauses, I understand them to define the meaning, supposing there is nothing else in the act opposed to the particular interpretation. When a concise term is used, which is to include many other subjects besides the actual thing designated by the word, it must always be used with due regard to the true, proper, and legitimate construction of the act."[77] And again, "although the meaning of the words is defined by the statute, yet that statute declares (what would have been supplied if it had not been so expressed) that the words are not to have that meaning attached to them in the interpretation clause if a contrary intention appears."[78] And in Louisiana, it is said that where posi-

[75] Ex parte Ferguson, L. R. 6 Q. B. 280. A statute made certain provisions for the safe-keeping of petroleum and certain dangerous products. It enacted that "petroleum shall include any product thereof that gives off an inflammable vapor at a temperature of less than 100 degrees." Blackburn, J., said: "That means that petroleum shall mean petroleum and also include that which might not otherwise be considered as petroleum, viz., products derived from petroleum." That is, petroleum itself is not excluded by the terms of the act. Jones v. Cook, L. R. 6 Q. B. 505. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[76] Robinson v. Local Board of Barton-Eccles, L. R. 8 App. Cas. 798. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[77] Midland Ry. Co. v. Ambergate, etc., Ry. Co., 10 Hare, 359. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[78] Dean of Ely v. Bliss, 2 De G., M. & G. 459. And see Ryan v. State (Ind.) 92 N. E. 340. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

tive enactments of the Civil Code are at variance with the definitions which it contains, the latter must be considered as modified by the clear intent of the former.[79] In the next place, statutory definitions of this character are not to be given any effect beyond the statute in which they are found or statutes in pari materia with it. "Definitions have no meaning beyond that which those who use them intend they should have. When incorporated in a code, they exclusively refer to the positive enactments inserted in that code on the subject of which they treat, and have no meaning beyond those enactments." [80] For this reason, an interpretation given in a statute is to be restricted to the purposes and effects of that statute, and not made a general rule of law. Thus, where an act relating to the registration of bills of sale provides that the term "personal chattels" shall be deemed to include fixtures, this does not make fixtures personal chattels for any purpose outside of that statute.[81] So also, a legislative definition in a statute does not govern in an indictment. "The construction of the statutes is governed by legislative definitions, that of indictments is governed entirely by the ordinary use of language." [82]

A distinction has also been taken between interpretation clauses which are incorporated in, and apply to, only one particular act of the legislature, and those which form a part of an entire code, revision, or compiled body of laws and are intended to govern the whole. "Statutory provi-

[79] Egerton v. Third Municipality of New Orleans, 1 La. Ann. 435. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[80] Depas v. Riez, 2 La. Ann. 30. On the same principle, where the constitution of a state declares that the word "corporation" shall bear a certain meaning "as used in this constitution," this does not control the definition or meaning of the word when found in a statute. Commonwealth v. Adams Exp. Co., 123 Ky. 720, 97 S. W. 386, 29 Ky. Law Rep. 1280. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[81] Meux v. Jacobs, L. R. 7 H. L. 481. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[82] State v. Adams, 51 N. H. 568. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

sions," says Sutherland, "are made in various forms to have effect specially in the interpretation of the law. They are distinguishable, and all are not construed and applied in the same manner. There is a manifest difference between definitive or interpretation clauses which are special and those which are general, the former always having the most controlling effect where it is obvious that the legislature, without misconception of the effect of other legislation, have precisely in view the particular words or provisions to which the clause in question ostensibly applies." [83] To illustrate the operation of interpretation clauses in a general body of laws, we may mention that the Code of Illinois provides, in relation to statutes, that "all general provisions, terms, phrases, and expressions shall be liberally construed in order that the true intent and meaning of the legislature may be fully carried into effect." This provision, it is said, "requires a liberal construction to effectuate the purpose of the legislature, but it does not require the court to bring cases of a like nature, not named in terms or by clear implication, into the statute, nor to give a narrow and restricted meaning to the language employed, but to fairly and reasonably carry out the intention of the legislature as gathered from the entire provision or enactment." [84]

[83] Sutherland, Stat. Constr. § 231. See, also, State ex rel. Kelly v. Shepherd, 218 Mo. 656, 117 S. W. 1169, 131 Am. St. Rep. 568. The Revised Statutes of Missouri contain a section relating to the construction of statutes which provides that "the construction of all statutes shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the Legislature or the context of the same statute." Rev. St. 1899, § 4160. Among the rules so prescribed is that "the place where any person having no family shall generally lodge shall be deemed the place of his residence." But the Supreme Court of that state, in the case above cited, held that the object of the Legislature in the section referred to was simply to furnish additional rules of construction, which the court might or might not use as the case might require, and that the Legislature had no intention of putting its own imperative construction, as to the definition of the word "residence," on all past and future statutes. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

[84] Hankins v. People, 106 Ill. 628. *See "Statutes," Dec. Dig. (Key No.) § 179; Cent. Dig. § 258.*

CHAPTER VII

EXTRINSIC AIDS IN STATUTORY CONSTRUCTION

90. Admissibility of Extrinsic Aids.
91. Contemporary History.
92. Contemporary Construction and Usage.
93. Judicial Construction.
94. Executive Construction.
95. Legislative Construction.
96. Journals of Legislature.
97. Opinions of Legislators.
98. Motives of Legislature.

ADMISSIBILITY OF EXTRINSIC AIDS

90. In the interpretation of a statute, if a doubt or uncertainty as to the meaning of the legislature cannot be removed by a consideration of the act itself and its various parts, recourse may be had to extraneous facts, circumstances, and means of explanation, for the purpose of determining the legislative intent; but those only are admissible which are logically connected with the act in question, or authentic, or inherently entitled to respectful consideration.

When Resort may be Had to Extrinsic Aids

The cardinal rule of all statutory construction is that the meaning and intention of the legislature are to be sought for. This meaning and intention are to be sought first of all in the statute itself—in the words which the legislature has chosen to express its purpose. If these words convey a definite, clear, and sensible meaning, that must be accepted as the meaning of the legislature, and it is not permissible to vary it or depart from it by reason of any considerations found outside the statute or based on mere conjecture. In such case, there is no room for construction.[1]

[1] Webber v. St. Paul City Ry. Co., 97 Fed. 140, 38 C. C. A. 79; Duncan v. Combs, 131 Ky. 330, 115 S. W. 222; Green v. Common-

But if the words of the law are not intelligible, if there arises a substantial doubt as to their meaning or application, or if there is ambiguity on the face of the statute, then the endeavor must be made to ascertain the true meaning and intent of the legislature. And to this end, first of all, the intrinsic aids for the interpretation of the statute are to be resorted to. It should be read and construed as a whole; its various parts should be compared; each doubtful word or phrase is to be read in the light of the context; the interpretation clause, if there is any, should be examined to see if it defines or explains the ambiguous part; and light may be sought from the title of the act, the preamble, and even the headings of the chapters and sections.

But if these intrinsic aids are exhausted without success, if there still remains a substantial doubt or ambiguity, then recourse may be had to extraneous facts, considerations, and means of explanation, always with the same object, to find out the real meaning of the legislature.[2]

wealth, 15 Ky. Law Rep. 297; State ex rel. Zimmerman v. City of St. Paul, 81 Minn. 391, 84 N. W. 127; State v. Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833, 114 Am. St. Rep. 804; Propst v. Southern Ry. Co., 139 N. C. 397, 51 S. E. 920. "Whether we are considering an agreement between parties, a statute, or a constitution, with a view to its interpretation, the thing we are to seek is the thought which it expresses. To ascertain this, the first resort in all cases is to the natural signification of the words employed, in the order and grammatical arrangement in which the framers of the instrument have placed them. If, thus regarded, the words embody a definite meaning, which involves no absurdity and no contradiction between different parts of the same writing, then that meaning apparent on the face of the instrument is the one which alone we are at liberty to say was intended to be conveyed. In such a case, there is no room for construction. That which the words declare is the meaning of the instrument, and neither courts nor legislatures have the right to add to or take away from that meaning." Newell v. People, 7 N. Y. 9. "In construing these laws, it has been truly stated to be the duty of the court to effect the intention of the legislature; but this intention is to be searched for in the words which the legislature has employed to convey it." The Paulina v. United States, 7 Cranch, 52, 3 L. Ed. 266, per Marshall, C. J. *See "Statutes," Dec. Dig. (Key No.) § 214; Cent. Dig. § 290.*

[2] See People v. Schoonmaker, 63 Barb. (N. Y.) 44; Pacific Coast S. S. Co. v. United States, 33 Ct. Cl. 36; Claysville Borough School

But this does not mean that all such extrinsic circumstances are entitled to equal weight in determining the meaning of the statute. Some of them will be of very great authority; others of very little force; some of no value, except as tending to confirm a preconceived view of the construction of the law. Neither does it mean that anything and everything outside the statute may be thus consulted in regard to its meaning. There is a rule on this point, although it has not been clearly formulated by the courts, but has rather been taken for granted and silently acted on. It is similar to the rule which requires the best evidence that is available, for the proof of any fact in issue in an action or suit. It may be thus stated: The extrinsic fact or circumstance which it is permissible to consider in the construction of an ambiguous statute must be either logically connected with the act in question, as a statute in pari materia, or it must be authentic (authoritative), such as a legislative declaration of the meaning of the law, or it must be inherently entitled to respect or to weight, by reason of the universality of its acceptance or prevalence, or by reason of its official character.[3] A general usage, a practical construction by the executive department of the government, and an opinion by the legal adviser of the executive, are examples of the last class.

Parol evidence is very rarely, if ever, admissible to explain the meaning of a statute. Even the testimony of the person who drafted the bill or introduced it in the legislature, in explanation of its purpose and intention, is generally rejected; the courts preferring to educe such purpose

Dist. v. Worrell, 37 Pa. Super. Ct. 10. *See "Statutes," Dec. Dig. (Key No.) § 214; Cent. Dig. § 290.*

[3] "We are of opinion, on principle as well as authority, that whenever a question arises in a court of law of the existence of a statute, or of the time when a statute took effect, or of the precise terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question, always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule." Gardner v. The Collector, 6 Wall. 499, 18 L. Ed. 890. *See "Statutes," Dec. Dig. (Key No.) § 214; Cent. Dig. § 290.*

from a construction of the act itself rather than to rely on means of information so uncertain and so wanting in authority.[4] But this rule may sometimes be relaxed in cases where the statute is in the nature of a grant, and the object is rather to apply it to its proper subject-matter than to explain its terms. Thus, in a case in Texas, the testimony of a surveyor was held admissible to identify the boundaries of a town with the limits defined in its charter.[5]

It should also be observed that the principle which requires that the intrinsic aids to the interpretation of the law shall be exhausted before recourse is had to matters outside the statute does not forbid the conjoint consideration of all these matters, when they all tend to the establishment of one and the same view in regard to the construction to be adopted. Very frequently, the courts will state their opinion as to the proper construction of a statute and support it by arguments drawn from many diverse sources, sources outside the words of the act as well as those which are to be found within it. But the rule means that if the intrinsic means of determining the will and intention of the legislature are sufficient to put a clear, definite, and sensible meaning upon the law, this should be adopted, and it should not be rejected or overthrown on extraneous considerations.

Dictionaries

Dictionaries, both legal, scientific, and general, may be consulted by the courts, in proper cases, in the construction of a statute. It is indeed quite customary for the judicial tribunals to turn to the standard lexicons for aid in determining the meaning to be assigned to words of common speech or to technical terms. They do not recognize these works as binding authorities, which they are imperatively required to follow, but consider their definitions as persuasive evidence in support of the conclusions which they are

[4] Garland County v. Hot Springs County, 68 Ark. 83, 56 S. W. 636; State v. Hoff (Tex. Civ. App.) 29 S. W. 672. *See "Statutes," Dec. Dig. (Key No.) § 221; Cent. Dig. § 299.*

[5] State v. Hoff (Tex. Civ. App.) 29 S. W. 672. *See "Statutes," Dec. Dig. (Key No.) § 214; Cent. Dig. § 290.*

induced, on other and more weighty considerations, to adopt.[6] "I am quite aware," says Coleridge, C. J., "that dictionaries are not to be taken as authoritative exponents of the meanings of words used in acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books." [7] But "the best dictionary is but a guide to the true meaning of a word in a particular context, and can never be an absolute authority on so varied and fluctuating a subject as language. It facilitates the comparison of the different meanings of a word, and aids the memory of the person in search of the particular meaning, but can rarely anticipate the exact color which will be given to any word or phrase by the context in which it is set." [8] And "no meaning of a word which has received a construction, by law or uniform custom, can be adopted from the dictionaries in conflict with that construction. And where a word is reconcilable with law or established custom in the particular manner in which it is used, a different meaning cannot be given to it upon the authority of a lexicographer." [9]

Documents and State Papers

Documentary evidence which is capable of throwing light upon the meaning of a statute is admissible in aid of its interpretation, especially when the evidence is of the character of a public official document or state paper.[10] This principle is well illustrated in the case of United States v.

[6] See Burke v. Monroe County, 77 Ill. 610; United States v. Three Railroad Cars, 1 Abb. (U. S.) 196, Fed. Cas. No. 16,513; Burnam v. Banks, 45 Mo. 351; Dole v. New England Mut. Marine Ins. Co., 6 Allen (Mass.) 386. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; "Evidence," Cent. Dig. § 1518.*

[7] Queen v. Peters, L. R. 16 Q. B. Div. 636. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; "Evidence," Cent. Dig. § 1518.*

[8] Hardcastle, Stat. Constr. (2d Ed.) 172.

[9] State v. Hueston, 44 Ohio St. 1, 4 N. E. 471. See *"Statutes," Dec. Dig. (Key No.) § 214; Cent. Dig. § 295; "Evidence," Cent. Dig. § 1518.*

[10] Pacific Coast S. S. Co. v. United States, 33 Ct. Cl. 36. *See "Statutes," Dec. Dig. (Key No.) § 221; Cent. Dig. § 299.*

Webster.[11] This case involved the construction of an act of Congress providing for the payment of the expenses of the Florida war, and the question was as to the authority of a quartermaster to pay for property taken by the United States by impressment. Mr. District Judge Ware said: "Looking at the words of the act alone, it is difficult to derive from them an authority for the payment of any other claims than such as the quartermaster is authorized to settle by the general laws and military usage. But there is a paper, among the public documents of that session of Congress, which may, like the preamble of a statute, serve to fix and give a more precise and definite meaning to these general terms, by showing the cause and purposes for which the act was passed. It is a paper which was prepared by the War Department, submitted to the House of Representatives, and by their order printed, before the passage of the law. It contains an abstract of the various claims which were, or would be, preferred against the United States, growing out of the Florida war, for the payment of which there was no authority under the existing laws, and which must therefore be ultimately rejected, unless provision were made for their settlement by a special act. It is a rule in the construction of a statute that recourse may be had to the preamble, though it is in strictness no part of the law, as one element for opening and expounding the meaning and intention of the legislature, although it cannot control the enacting part of the law when the words are clear and explicit, and are manifestly more comprehensive than the preamble. But when the words of the enacting part are ambiguous, or may fairly admit a larger or more restricted signification, then reference may be made to the preamble to determine which sense is intended by the legislature. The reason is that the preamble states the grounds and objects of the law. And when the reasons and grounds of the law are made known in any other manner equally certain and authentic, they are entitled to have the same influence in the construction of the statute as the pre-

[11] 2 Ware (Dav. 38) 46, Fed. Cas. No. 16,658. *See "Statutes," Dec. Dig. (Key No.) § 221; Cent. Dig. § 299.*

amble, if the meaning of the words is doubtful, because every law ought to be carried into effect according to the intention of the law-maker, when the intention can be certainly known. It appears to me that a document, prepared and published as this was, and preserved among the public archives of the country, stating the nature of the claims to be provided for, and the necessity of a special act for that purpose, and which was before the legislature at the time the act was passed, may be fairly invoked in aid of the exposition of the statute, not to control the meaning of the legislature clearly and explicitly expressed, but to give a precise and determinate meaning to words which are ambiguous or expressions which may be taken with a greater or less latitude of signification. If it does not bring before the court the objects and intentions of the law-maker in so solemn and authentic a form as when these intentions are set forth in a preamble, at least it affords a medium of exegesis, against which the court cannot shut its eyes without excluding from its consideration what would have an influence upon every mind studious of ascertaining the real intention of the law-maker." In another case, a statute provided that cities having 14,000 children between the ages of 6 and 21 years, as shown by the official returns of county superintendents made to the state superintendent, should have a board of metropolitan police. There were official reports to which the court could resort for information as to such population. Hence it was held that the act could not be pronounced indefinite and uncertain, in respect to the cities to which it was applicable.[12] So also, when, at the time of the passage of an act, a map was used by the legislature while considering the question, and was referred to in the act itself, it was held that it was thereby incorporated into, and became a part of, the act.[13] Public

[12] State v. Kolsem, 130 Ind. 434, 29 N. E. 595. But see Browne v. Turner, 174 Mass. 150, 54 N. E. 510, holding that the fact that the report of a municipal board was mailed to the several members of the legislature cannot affect the construction of a statute subsequently enacted concerning the subject of the report. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; Cent. Dig. §§ 290, 299.*

[13] People ex rel. Burr v. Dana, 22 Cal. 11. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; Cent. Dig. §§ 290, 299.*

petitions presented to a legislative body, praying for legislative action, would also be admissible evidence of the meaning and intention, or the scope and effect, of a statute passed in pursuance of them. A memorial address to Congress by the legislature of a state is also a document which is entitled to this sort of consideration. But a statement in such a memorial, to the effect that certain lands were not liable to taxation, cannot be admitted to control the judgment of the court, in reference to the construction of the tax laws of that state, when the court is clearly of the opinion that the statement was incorrect and the law was otherwise.[14]

Scientific and Political Writings

When it becomes necessary to determine the meaning of words or phrases employed in a statute by the aid of extraneous circumstances recourse may be had, for this purpose, to the published writings of scientists, publicists, and other authors, conversant with the particular subject-matter, provided that the works consulted are of generally accepted authority. The standard works on medicine, the physical sciences, commerce, political economy, and other subjects, are thus frequently referred to by the courts. Such sources of information are not invested with a controlling authority, but may often furnish valuable assistance to the judicial tribunals in their search for the meaning intended to be conveyed by an obscure or technically worded statute. For example, in a case in Alabama, it appeared that a statute made it a penal offense to play, in public places, "at any game with dice." The question arose as to whether the game called "backgammon" was within this statute, and to determine the nature of the game and solve this question, the court referred to and cited the "American Cyclopædia." [15] So, in a case before the Supreme Court of the United States involving the construction of the federal Constitution, with a view to determine the validity of

[14] Ross v. Board of Sup'rs of Outagamie County, 12 Wis. 26. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; Cent. Dig. §§ 290, 299.*

[15] Wetmore v. State, 55 Ala. 198. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; Cent. Dig. §§ 290, 299.*

the income tax law of 1894, and especially with reference to the meaning of the phrase "direct taxes," the judges referred among other authorities, to the published writings of Albert Gallatin, Alexander Hamilton, James Madison, and others.[16] And the reader need scarcely be reminded of the high measure of respect which is accorded to the opinions of the Federalist on all questions concerning the interpretation of the Constitution of the United States.

Legal Text-Books

The writings of legal authors, while never admitted to be absolutely authoritative, are often of considerable assistance to the courts in the department of statutory construction, as in other branches of the law. Such works may be consulted whenever a resort to extrinsic aids is permissible, and when their remarks are pertinent and well-informed. They serve as persuasive or cumulative evidence of the true meaning of the disputed statute, but the degree of respect to be accorded to their opinions will vary with the learning and reputation of the author, and the measure of care and right reason with which he has elucidated his subject. In an English case, Jessel, M. R., observed: "The text-writers agree that this is the true view of the act. I should not have any difficulty without the assistance of the text-writers, but it is very satisfactory to find that they have considered it independently in the same way." [17] Lord Brougham, construing a Scotch statute, reinforced his opinion by references to the Scottish text-writers Erskine, Bankton, and Bell, and said: "The authority of all text-writers is in favor of the construction adopted by the court below." [18] So, on the question of the construction of an ancient statute, it was said: "We must look not only to the statute

[16] Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; Cent. Dig. §§ 290, 299.*

[17] In re Warner's Settled Estates, L. R. 17 Ch. Div. 711. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; Cent. Dig. §§ 590, 599; "Evidence," Dec. Dig. (Key No.) § 362; Cent. Dig. § 1515.*

[18] McWilliams v. Adams, 1 Macq. H. L. 120. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; Cent. Dig. §§ 290, 299; "Evidence," Dec. Dig. (Key No.) § 362; Cent. Dig. § 1515.*

but to the commentary [upon it] of Lord Coke, which has been uncontradicted to the present day. When we see the authority of so great a writer, not only uncontradicted, but adopted in all the digests and text-books, we can scarcely err if we adhere to his opinion." [19]

Official Opinions

The official opinions rendered by the law officers of the government, on questions of statutory construction, are always received with great respect. Thus, the opinions of the Attorneys General of the United States, on questions involving the construction of the public land laws, when they have been accepted and acted upon by the Department of the Interior, are entitled to the highest respect. "These opinions of very eminent lawyers are worthy of high consideration, especially as, when giving them, they were the official advisers of the government, and their advice was accepted and acted upon by the Department of the Interior." [20]

Judicial Notice

All those matters or facts of public and general notoriety of which the courts may take judicial notice may be summoned to their aid, when it is necessary to look beyond the words of a statute in order to determine its meaning and intention, or its proper scope and effect.[21] Thus, for example, for the purpose of putting a construction upon a statute which prohibits or regulates the manufacture or sale of "intoxicating" or "spirituous" liquors, the courts will take judicial notice that such fluids as whisky, brandy, gin, and rum, belong to the class mentioned in the act.[22]

[19] Strother v. Hutchinson, 4 Bing. N. C. 83. *See "Statutes," Dec. Dig. (Key No.) §§ 214, 221; Cent. Dig. §§ 290, 299; "Evidence," Dec. Dig. (Key No.) § 362; Cent. Dig. § 1515.*

[20] Johnson v. Ballou, 28 Mich. 379, per Cooley, J. And see State v. Gunter, 36 Tex. Civ. App. 381, 81 S. W. 1028; State v. Brady (Tex. Civ. App.) 114 S. W. 895. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[21] Mohawk Bridge Co. v. Utica & S. R. Co., 6 Paige (N. Y.) 554; Pacific Coast S. S. Co. v. United States, 33 Ct. Cl. 36; Browne v.

[22] See note 22 on following page.

CONTEMPORARY HISTORY

91. When a resort to extrinsic evidence becomes necessary, in the construction of a statute, it is proper to consider the facts of contemporary history, the previous state of the law, the circumstances which led to the enactment, and especially the evil which it was designed to correct, and the remedy intended.[22]

Turner, 174 Mass. 150, 54 N. E. 510. *See "Criminal Law," Dec. Dig. (Key No.) § 304; Cent. Dig. §§ 700–717; "Evidence," Dec. Dig. (Key No.) §§ 1–52; Cent. Dig. §§ 1–72.*

[22] Schlicht v. State, 56 Ind. 173; Fenton v. State, 100 Ind. 598; Commonwealth v. Peckham, 2 Gray (Mass.) 514; State v. Munger, 15 Vt. 290; State v. Wadsworth, 30 Conn. 55. *See "Criminal Law," Dec. Dig. (Key No.) § 304; Cent. Dig. §§ 700–717; "Evidence," Dec. Dig. (Key No.) §§ 1–52; Cent. Dig. §§ 1–72.*

[23] United States v. Wong Kim Ark, 169 U. S. 649, 18 Sup. Ct. 456, 42 L. Ed. 890; In re Wahll (D. C.) 42 Fed. 822; Robert Dunlap & Co. v. United States, 33 Ct. Cl. 135; Clark v. United States, 37 Ct. Cl. 60; Merchants' Nat. Bank of Baltimore v. United States, 42 Ct. Cl. 6; Prowell v. State ex rel. Hasty, 142 Ala. 80, 39 South. 164; Grannis v. Superior Court of City and County of San Francisco, 146 Cal. 245, 79 Pac. 891, 106 Am. St. Rep. 23; Dekelt v. People, 44 Colo. 525, 99 Pac. 330; District of Columbia v. Dewalt, 31 App. D. C. 326; Curry v. Lehman, 55 Fla. 847, 47 South. 18; City of Chicago v. Green, 238 Ill. 258, 87 N. E. 417; Connecticut Mut. Life Ins. Co. v. Talbot, 113 Ind. 373, 14 N. E. 586, 3 Am. St. Rep. 655; State ex rel. Duensing v. Roby, 142 Ind. 168, 41 N. E. 145, 33 L. R. A. 213, 51 Am. St. Rep. 174; Board of Com'rs of Clinton County v. Given, 169 Ind. 468, 82 N. E. 918; Woods v. Mains, 1 G. Greene (Iowa) 275; State ex rel. New Orleans Pac. Ry. Co. v. Nicholls, 30 La. Ann. 980; State v. Maloney, 115 La. 498, 39 South. 539; Winslow v. Kimball, 25 Me. 493; Alexander v. Worthington, 5 Md. 471; Maryland Agricultural College v. Atkinson, 102 Md. 557, 62 Atl. 1035; Sibley v. Smith, 2 Mich. 486; People ex rel. Attorney General v. Michigan Cent. R. Co., 145 Mich. 140, 108 N. W. 772; State v. Twin City Telephone Co., 104 Minn. 270, 116 N. W. 835; Southwest Missouri Light Co. v. Scheurich, 174 Mo. 235, 73 S. W. 496; Dowdy v. Wamble, 110 Mo. 280, 19 S. W. 489; Greeley v. Missouri Pac. Ry. Co., 123 Mo. 157, 27 S. W. 613; Grimes v. Reynolds, 94 Mo. App. 576, 68 S. W. 588; Springfield Grocer Co. v. Walton, 95 Mo. App. 526, 69 S. W. 477; State ex rel. Aull v. Field, 112 Mo. 554, 20 S. W. 672; City of Lexington v. Commercial Bank, 130 Mo. App. 687, 108 S. W. 1095; Wyatt v. State Board of Equalization, 74 N. H. 552, 70 Atl. 387; Tonnele

In one of the ancient and most important cases on the subject of statutory construction, we read: "It was resolved by the Barons of the Exchequer that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (1) What was the common law before the making of the act; (2) what was the mischief and defect for which the common law did not provide; (3) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; (4) the true reason of the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the act, pro bono publico." [24] "The occasion of the enactment of a law," says another court, "may always be referred to in interpreting and giving effect to it. The court should place itself in the situation of the legislature and ascertain the necessity and probable object of the statute, and then give such construction to the language used as to carry the intention of the legislature into effect, so far as it can be ascertained from the terms of the statute itself." [25] "Courts, in construing a

v. Hall, 4 N. Y. 140; Fairchild v. Gwynne, 16 Abb. Prac. (N. Y.) 23; Keith v. Quinney, 1 Or. 364; Big Black Creek Imp. Co. v. Commonwealth, 94 Pa. 450; Riley v. Pennsylvania Co., 32 Pa. Super. Ct. 579; Williams v. State, 52 Tex. Cr. R. 371, 107 S. W. 1121; State v. Stewart, 52 Wash. 61, 100 Pac. 153; Scouten v. City of Whatcom, 33 Wash. 273, 74 Pac. 389; Clark v. City of Janesville, 10 Wis. 136; King v. Inhabitants of Hodnett, 1 Durn. & E. 96; Baring v. Erdman, Fed. Cas. No. 981; Richard v. Lazard, 108 La. 540, 32 South. 559; Keyport & M. P. Steamboat Co. v. Farmers' Transp. Co., 18 N. J. Eq. 13; Story v. New York El. R. Co., 3 Abb. N. C. (N. Y.) 478; Daniel v. Simms, 49 W. Va. 554, 39 S. E. 690; State v. Boston & M. R. R., 75 N. H. 327, 74 Atl. 542; Cram v. Chicago, B. & Q. Ry. Co., 85 Neb. 586, 123 N. W. 1045. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[24] Heydon's Case, 3 Coke, 7a. See, also, 1 Bl. Comm. 87. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[25] People v. Board of Sup'rs of Columbia County, 43 N. Y. 130.

statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it." [26] Hence, whenever light can be derived from such sources, the courts will take judicial notice of the facts of contemporary history, the prior state of the law, the particular abuse or defect which the act was meant to remedy, and the application to such state of affairs of the language which it employs. They will also, for this purpose, inform themselves as to such facts and circumstances by any and all available means.[27] Thus, while the courts cannot recur to the views of individual members of the legislative body expressed in debate on the act, yet they may advise themselves as to the history of the times and the general state of public, judicial, and legislative opinion at that period.[28] For instance, in the interpretation of the "alien contract labor law," the Supreme Court of the United States held that it was justified in looking into contemporaneous events, including the situation as it existed, and as it was pressed upon the attention of Congress, while the act was under consideration; and to this end, it considered not only the general historical condition of the times, as showing the abuse against which the statute was directed, but also the petitions presented to Congress asking for the enactment of such a law, the testimony given before the congressional committees, and the reports of those committees to their respective houses.[29]

In regard to the scope of the facts and circumstances which may thus be inquired into and taken into account in

See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.

[26] United States v. Union Pac. R. Co., 91 U. S. 72, 23 L. Ed. 229. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[27] Lake v. Parish of Caddo, 37 La. Ann. 788. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[28] United States v. Oregon & C. R. Co. (C. C.) 57 Fed. 426. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[29] Church of Holy Trinity v. United States, 143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

interpreting the statute, it is said that they must be such as were known to the legislature and which it may be assumed the legislature intended to meet.[30] But it is a rule of constitutional law—believed to be equally applicable to the construction of statutes, because equally proper and pertinent—that it can never be presumed that the legislature has acted unadvisedly or mistakenly, nor can it be shown that the legislature failed to investigate the subject-matter of the statute and to inform itself and to exercise its judgment and discretion, nor that it was induced to enact the statute by deception or false representations.[31] Therefore a court, in seeking to discover the legislative intention from a study of contemporary facts and circumstances, need not feel limited to a consideration of such facts as are shown to have been actually within the contemplation of the legislature, but may take into account every pertinent circumstance which, if present in the legislative mind, may or might have influenced its determination or colored the meaning of the words it chose to employ. Thus, it is said that a statute may be construed with reference to the habits of the business prevalent among the people to whom it applies.[32]

But this rule has its necessary restrictions. Such evidence of the meaning of the legislature is not to be resorted to unless there is substantial need of it; that is, unless there is a real doubt or ambiguity on the face of the enactment. "As has been truly observed, we have nothing

[30] State v. Harden, 62 W. Va. 313, 58 S. E. 715; Bull v. New York City Ry. Co., 192 N. Y. 361, 85 N. E. 385, 19 L. R. A. (N. S.) 606. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[31] Cantwell v. Missouri, 199 U. S. 602, 26 Sup. Ct. 749, 50 L. Ed. 329; Stevenson v. Colgan, 91 Cal. 651, 27 Pac. 1089, 14 L. R. A. 459, 25 Am. St. Rep. 230; Eckerson v. City of Des Moines, 137 Iowa, 452, 115 N. W. 177; People ex rel. Ellis v. Calder, 153 Mich. 724, 117 N. W. 314, 126 Am. St. Rep. 550; Flint & F. Plank Road Co. v. Woodhull, 25 Mich. 99, 12 Am. Rep. 233; St. Louis & S. F. R. Co. v. Hadley (C. C.) 168 Fed. 317. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[32] Higgins v. Rinker, 47 Tex. 393. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

to do with the history of the words unless the words in the statute are doubtful and require historical investigation to explain them. If the words are really and fairly doubtful, then, according to well-known legal principles and principles of common sense, historical investigation may be used for the purpose of clearing away the doubts which the phraseology of the statute creates." [33] It is also said that the intention of the legislature in enacting a statute cannot be determined by reference to any traditional history of the occasion of its passage, unless that results from some known state of embarrassment under the former law.[34] And what is termed the policy of the government with reference to any particular legislation is declared to be too unstable a ground upon which to rest the judgment of the court in the interpretation of statutes.[35]

CONTEMPORARY CONSTRUCTION AND USAGE

92. When the meaning of a statute is doubtful, a practical construction put upon it at the time of its passage, or soon afterwards, and universally acquiesced in for a long period of time, as shown by a general usage, will be entitled to great weight and will be accepted as the true construction, unless there are cogent reasons to the contrary.

Contemporary Construction

"Contemporanea expositio," says Coke, "est fortissima in lege." [36] The contemporary construction of an old statute,

[33] Queen v. Most, L. R. 7 Q. B. Div. 244. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[34] Barker v. Esty, 19 Vt. 131. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[35] Hadden v. The Collector, 5 Wall. 107, 18 L. Ed. 518. But compare Jewell v. City of Ithaca, 36 Misc. Rep. 499, 73 N. Y. Supp. 953; Gilbert v. Craddock, 67 Kan. 346, 72 Pac. 869; Texas & P. Ry. Co. v. Interstate Commerce Commission, 162 U. S. 197, 16 Sup. Ct. 666, 40 L. Ed. 940. *See "Statutes," Dec. Dig. (Key No.) §§ 215–217; Cent. Dig. §§ 291–293.*

[36] 2 Co. Inst. 11. Note also the maxim, "Custom is the best interpreter of the law." 4 Co. Inst. 75; McKeen v. Delancy, 5 Cranch,

even though not official or per se authoritative, is entitled to great consideration, more especially if such construction was universally acquiesced in and acted upon; and in view of the inconveniences which would result from overruling it, it will not be reversed or changed by the courts unless it is very manifest that it was altogether erroneous.[87] It is fair to presume in such cases that if the construction put upon the statute, by those who were charged with its administration, or by those whose rights or interests were affected by it, had been contrary to the real meaning of the legislature in its enactment, the error would have been corrected, either by the enactment of a new law explaining the purpose of the earlier one or changing the practice which had grown up under it, or else by the judgments of the courts rendered in cases brought by parties interested in testing the validity and scope of the act. Hence if the

32, 3 L. Ed. 25; McFerran v. Powers, 1 Serg. & R. (Pa.) 106. So, also, in the Roman law. "Si de interpretatione legis quæratur, in primis inspiciendum est quo jure civitas retro in ejusmodi casibus usa fuisset, optima enim est legum interpres consuetudo." Dig. 1, 3, 37. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[87] Gorham v. Bishop of Exeter, 15 Q. B. 52; Blankley v. Winstanley, 3 Durn. & E. 279; Earl of Buckinghamshire v. Drury, 2 Eden, 60; Bank of United States v. Halstead, 10 Wheat. 51, 6 L. Ed. 264; Stuart v. Laird, 1 Cranch, 299, 2 L. Ed. 115; McKeen v. Delancy, 5 Cranch, 22, 3 L. Ed. 25; Barksdale v. Morrison, 1 Harp. (S. C.) 101; Rogers v. Goodwin, 2 Mass. 475; Packard v. Richardson, 17 Mass. 122, 9 Am. Dec. 123; Opinion of Justices, 3 Pick. (Mass.) 517; Board of Com'rs of Franklin Co. v. Bunting, 111 Ind. 143, 12 N. E. 151; Fall v. Hazelrigg, 45 Ind. 576, 15 Am. Rep. 278; In re Warfield's Will, 22 Cal. 51, 83 Am. Dec. 49; People ex rel. Badger v. Loewenthal, 93 Ill. 191; Brown v. State, 5 Colo. 496; Houghton v. Payne, 194 U. S. 88, 24 Sup. Ct. 590, 48 L. Ed. 888; Eddy v. Morgan, 216 Ill. 437, 75 N. E. 174; City of Louisville v. Louisville School Board, 119 Ky. 574, 84 S. W. 729; Clark v. Moody, 17 Mass. 145; Barber Asphalt Pav. Co. v. Meservey, 103 Mo. App. 186, 77 S. W. 137; Commonwealth v. Paine, 207 Pa. 45, 56 Atl. 317; State v. Rutland R. Co., 81 Vt. 508, 71 Atl. 197; Smith v. Bryan, 100 Va. 199, 40 S. E. 652; Commonwealth v. Posey, 4 Call (Va.) 109, 2 Am. Dec. 560; State v. Davis, 62 W. Va. 500, 60 S. E. 584, 14 L. R. A. (N. S.) 1142; Bernard v. Benson, 58 Wash. 191, 108 Pac. 439. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

contemporary interpretation has been silently acquiesced in by the legislature and never challenged in the courts, this is very strong evidence that it was right. But if the meaning of the statute is too plain to admit of any reasonable doubt, it cannot be thus overruled. Thus, the contemporary construction given to a statute by an officer intrusted with its execution cannot be adopted by the judiciary if contrary to the judicial construction.[38]

Usage

The best evidence of a contemporary construction of a statute, and of its universal acceptance, is a general usage, pursuant to such construction. Where the statute is of doubtful import on its face, great weight is due to such a usage, and it will not be disregarded by the courts, unless there are very satisfactory reasons to induce them to such a course of action.[39] A very good illustration of the effect of usage, in this behalf, is found in an early case in Massachusetts. On the interpretation of certain colonial laws of that state, giving to freemen the power to "dispose of" their lands, the court said: "Of these statutes a practical construction early and generally obtained that in the power to dispose of lands was included a power to sell and convey the common lands. Large and valuable estates are held in various parts of the commonwealth, the titles to which depend on this construction. Were the court now to decide that this construction is not to be supported, very great mischief would follow. And although, if it were now res integra, it might be very difficult to maintain such a construction, yet at this day the argumentum ab inconvenienti applies with great weight. We cannot shake a principle

[38] Union Pac. R. R. v. United States, 10 Ct. Cl. 548. And see Commonwealth, for Use of City of Louisville, v. Ross, 135 Ky. 315, 122 S. W. 161. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[39] Attorney General v. Bank of Cape Fear, 40 N. C. 71; Bailey v. Rolfe, 16 N. H. 247; Chesnut v. Shane's Lessee, 16 Ohio, 599, 47 Am. Dec. 387; Cameron v. Merchants' & Manufacturers' Bank, 37 Mich. 239; Appeal of Reeves, 33 Pa. Super. Ct. 196; McCurtain v. Grady, 1 Ind. T. 107, 38 S. W. 65. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

which in practice has so long and so extensively prevailed. If the practice originated in error, yet the error is now so common that it must have the force of law. The legal ground on which this provision is now supported is that long and continued usage furnishes a contemporaneous construction which must prevail over the mere technical import of the words."[40]

In particular, it is said that a contemporary exposition of statutory provisions, and a practice and usage under them followed for years, should preclude a construction which would impose a penalty for conduct which was consistent with that practice.[41] Thus, property which was regarded as exempt from taxation under a former statute will not be taxed, after such law is changed, for the years when the previous law was in force, in the absence of a strong showing that the property was not rightly exempt, silence and acquiescence during a course of years being regarded as a contemporaneous construction of the statute and the best evidence of the legislative intent in enacting it.[42]

The "usage" which is entitled to be considered in the construction of a statute is such as is practical, general, and public. It may be the usage of the courts, in regulating matters of practice and procedure without formal decisions; of the executive and administrative officers of the government, in the discharge of their duties; of the legal profession generally, in advising their clients and conducting their business;[43] of the practical men of the community, in conforming their conduct and their contracts to the generally understood meaning of the law;[44] or of some or all of these combined. But it must not be merely theoretical or

[40] Rogers v. Goodwin, 2 Mass. 475. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[41] State v. Northern Pac. Ry. Co., 95 Minn. 43, 103 N. W. 731. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[42] State ex rel. Cunningham v. Board of Assessors of Parish of Orleans, 52 La. Ann. 223, 26 South. 872. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[43] Matz v. Chicago & A. R. Co. (C. C.) 85 Fed. 180; Fears v. Riley, 148 Mo. 49, 49 S. W. 836. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[44] Himrod Coal Co. v. Stevens, 104 Ill. App. 639; People v. Borda,

speculative. Nor, it is further said, should the courts be influenced by a usage or practice which is one-sided, or which appears to have been established by the influence of those parties who now oppose a reversal of it by a new construction, or which results in some peculiar benefit or advantage to those who insist upon it as a contemporary construction.[45] Yet there are decisions to the effect that the practical construction placed upon its own charter by a public service corporation or other corporate body should be adopted by the court, if it is not plainly unreasonable or contrary to the evident meaning of the law, especially if it has been acquiesced in for a term of years by those who might be interested in establishing a different interpretation.[46]

As to the length of time during which a usage must have prevailed, in order to entitle it to be considered in the construction of a statute, there is some difference of opinion in the authorities, and in the nature of things it cannot be very definitely settled. Some of the English cases speak of a period of two hundred or three hundred years. In this country, where no such statutory age is as yet possible, a very much shorter period of time would probably suffice to justify the courts in considering the usage.[47] But it must

105 Cal. 636, 38 Pac. 1110. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[45] Wear v. Bryant, 5 Mo. 147; Tindall v. Johnson, 5 Mo. 179; State v. Southern Ry. Co., 122 N. C. 1052, 30 S. E. 133, 41 L. R. A. 246. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[46] City of Louisville v. Louisville Water Co., 105 Ky. 754, 49 S. W. 766; Clark's Run & S. R. Turnpike Road Co. v. Commonwealth, 96 Ky. 525, 29 S. W. 360. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[47] In Green v. Bancroft, 75 N. H. 204, 72 Atl. 373, the court refused to disturb a practice (or general understanding) in regard to the descent of intestate property which had been acquiesced in for 120 years. In State ex rel. Bashford v. Frear, 138 Wis. 536, 120 N. W. 216, controlling weight was given to a practical construction of an ambiguous law which had been persistent for fifty years. Similar deference was paid to a usage or practical construction of a statute which had been acquiesced in for thirty-seven years, in Bates v. Hacking, 29 R. I. 1, 68 Atl. 622, 14 L. R. A. (N. S.) 937, and for twen-

be remarked that the principle of "contemporanea expositio" is not applicable to laws recently passed. And the degree of force which should attach to the argument from usage will increase with the age of the usage. "Where there are ambiguous expressions in an act passed one or two centuries ago, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years by the unanimous consent of all parties interested, as evidencing what must presumably have been the intention of the legislature at that remote period. But I feel bound to construe a recent statute according to its own terms, when these are brought into controversy, and not according to the views which interested parties may have hitherto taken." [48]

The existence and nature of such a usage is a matter of law. The court will take judicial notice thereof, or will inform itself by any proper and available means. Interested parties are neither required nor permitted to prove it as a fact. Thus, in a case in Connecticut, upon a question as to the validity of the execution of a will, a counselor, of long experience in the state, was offered as a witness, to show what had been the practice as to requiring the witnesses to a will to subscribe their names in the presence of each other, for the purpose of showing what was the general understanding of the legal profession as to the meaning of the statute of wills on this point. The testimony was rejected, and the appellate court held that this was proper. It was said that the judge, who alone is to decide as to the law, may, if he so desires, ask the advice of those who are learned in the law, but a party has no right to introduce such persons as witnesses.[49]

It is further to be remarked that a general law is not to be interpreted by a special or local usage; for, being of

ty years, in Commonwealth v. Mann, 168 Pa. 290, 31 Atl. 1003, and People v. Hurst, 41 Mich. 328, 1 N. W. 1027. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[48] Trustees of Clyde Navigation v. Laird, L. R. 8 App. Cas. 658. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[49] Appeal of Gaylor, 43 Conn. 82. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

general application, it cannot receive different constructions in different places, according to their varying local usages.[50] But if a statute is applicable only to a particular locality, doubtful words in it may be construed by usage prevailing at that place.[51]

Again, it must not be forgotten that usage, like all other extraneous aids in statutory construction, may be resorted to only when the meaning of the statute is involved in doubt or obscurity. If the act is so plain and clear in its terms as not to admit of any substantial doubt, the courts are bound to put upon it that construction which its terms demand, and to disregard any and all contrariant usages or popular opinions.[52] "As to usage," says Buller, J., "I am clearly of opinion that it ought not to be attended to in construing an act of Parliament which cannot admit of different interpretations; where the words of the act are doubtful, usage may be called in to explain them." [53] To the same effect is the following language of Lord Brougham: "Usage can be binding and operative upon the parties only as it is the interpreter of a doubtful law, as af-

[50] King v. Hogg, 1 Durn. & E. 721; City of Chicago v. Becker, 233 Ill. 189, 84 N. E. 242; Currie v. Page, 2 Leigh (Va.) 617. And see United States v. Pine River Logging & Improvement Co., 89 Fed. 907, 32 C. C. A. 406, where it was said that, "while it may be that proof of a custom or usage is sometimes admissible to aid in the construction of a statute as well as a private contract, yet when it is offered for that purpose, and with a view of altering the ordinary meaning of ordinary words or phrases, the evidence concerning the usage ought to show that it was prevalent in all sections where the law was to become operative, and was so far universal in the sections where it prevailed, as to leave no room for doubt that the usage was known to the law-maker, and that the statute which it serves to modify was enacted with reference thereto." *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[51] Love v. Hinckley, 1 Abb. Adm. 436, Fed. Cas. No. 8,548; Frazier v. Warfield, 13 Md. 279. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[52] Houghton v. Payne, 194 U. S. 88, 24 Sup. Ct. 590, 48 L. Ed. 888; Eddy v. Morgan, 216 Ill. 437, 75 N. E. 174; J. Burton Co. v. City of Chicago, 236 Ill. 383, 86 N. E. 93. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[53] King v. Hogg, 1 Durn. & E. 721. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

fording a contemporary interpretation; but it is quite plain that as against a plain statutory law no usage is of any avail. But this undeniable proposition supposes the statute to speak a language plainly and indubitably differing from the purport of the usage. Where the statute, speaking on some point, is silent as to others, usage may well supply the defect, especially if it is not inconsistent with the statutory directions, where any are given; or where the statute uses a language of doubtful import, the acting under it for a long course of years may well give an interpretation to that obscure meaning, and reduce that uncertainty to a fixed rule." [54] A custom, however venerable, must yield to a positive and explicit statute. Thus, for example, where the compensation of a public officer is fixed by statute, the officer cannot recover additional compensation for expenses incurred by him incident to the performance of his official duties; and it is immaterial that, by usage long antedating the statute, such incidental expenses have been paid heretofore without objection.[55] It is not permissible to show that the members of the legislature knew of a custom existing at the time the law was remodeled, in order to argue from their silence that they intended to sanction such custom.[56]

Communis Error Facit Jus

This maxim, though always regarded with distrust and accepted with great caution, has a certain validity as applied to matters of practice, and indicates the eventual legalization, by inveterate repetition, of that which was at first erroneous or even illegal. But it has no applicability to the interpretation of the written laws. It is sometimes

[54] Magistrates of Dunbar v. Duchess of Roxburghe, 3 Cl. & Fin. 335. But in Pease v. Peck, 18 How. 595, 15 L. Ed. 518, it is said that where a law, as published, has been acknowledged by the people, and has received a harmonious interpretation for a long series of years, the propriety may well be doubted of referring to an ancient manuscript to show that the law as published was not an exact copy of the original manuscript. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[55] Albright v. County of Bedford, 106 Pa. 582. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[56] Delaplane v. Crenshaw, 15 Grat. (Va.) 457. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

appealed to as if it meant that an erroneous understanding of the law, being universally accepted, will prevail over the true and proper understanding of the law. But this is not correct. The construction of a statute may be influenced, in case of doubt, by the course of practice under it (not the mere abstract understanding of it), especially if general and long continued. But if it is clear that the common understanding of a law is really and unmistakably "error," it cannot be at all regarded.[57] For example, in England, "a general understanding had prevailed, founded on the practice of a long series of years, that if patented inventions were used in any of the departments of the public service, the patentees would be remunerated by the officers or ministers of the crown administering such departments, as though the use had been by private individuals. In numerous instances, payments had been made to patentees for the use of patented inventions in the public service, and even the legal advisers of the crown appeared also to have considered the right as well settled. There was, further, little doubt that on the faith of the understanding and practice, many inventors had, at great expense of time and money, perfected and matured inventions, in the expectation of deriving a portion of their reward from the adoption of their inventions in the public service. It was nevertheless held that the language of the patent should be interpreted according to the legal effect of its terms, irrespective of the practice." [58] It must be admitted, however, that there are some decisions in which a practical construction has been allowed to override the obvious meaning of the law.[59]

[57] "It has been sometimes said, communis error facit jus; but I say communis opinio is evidence of what the law is; not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the groundwork and substratum of practice." Per Lord Ellenborough, C. J., in Isherwood v. Oldknow, 3 Maule & S. 382, 396. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[58] Broom, Leg. Max. 141, citing Feather v. Queen, 6 Best & S. 257, 289. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

[59] See, for instance, Clay v. Sudgrave, 1 Salk. 33. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

JUDICIAL CONSTRUCTION

93. Judicial decisions previously made upon the interpretation of particular terms and phrases used in a statute, and decisions subsequently rendered upon its effect, purpose, or scope, are strong evidence of its meaning, and are generally of controlling force in establishing its correct construction.

In interpreting the particular words and phrases used in a statute, it is to be presumed that the legislature was cognizant of a construction previously put upon them by the decisions of the courts and intended to employ them in the same signification.[60] And after the enactment of a statute, when a construction has been placed upon it by the highest court of the state, it will be steadily adhered to in subsequent cases, unless very plainly shown to have been wrong, and more especially where the construction so given is supported by a line of uniform decisions, and where it has been acquiesced in by the legislature for a succession of years. In that case, the construction becomes as much a part of the statute as if it had been written into it originally.[61] As applied to the highest or appellate court itself, this rule rests upon the well-known principle of stare decisis. As applied to the inferior courts of the state, it has a sufficient foundation in the rule that the decisions of the

[60] Daniel v. Simms, 49 W. Va. 554, 39 S. E. 690; Shehan v Louisville & N. R. Co., 125 Ky. 478, 101 S. W. 380, 31 Ky. Law Rep. 113; Commonwealth v. Greenwood, 205 Mass. 124, 91 N. E. 141; Cohen v. State, 53 Tex. Cr. App. 422, 110 S. W. 66; In re Moffitt's Estate, 153 Cal. 359, 95 Pac. 653, 20 L. R. A. (N. S.) 207. And see supra, p. 186 A statute enacted to relieve from the effect of a judicial decision construing another statute should be read in connection with such decision. People ex rel. American Exch. Nat. Bank v. Purdy, 196 N. Y. 270, 89 N. E. 838. *See "Statutes," Dec. Dig. (Key No.) § 215; Cent. Dig. § 291.*

[61] McChesney v. Hager, 31 Ky. Law Rep. 1038, 104 S. W. 714; Loeb v. Mathis, 37 Ind. 306; Eau Claire Nat. Bank v. Benson, 106 Wis. 624, 82 N. W. 604. And see infra, chapter XVIII. *See "Courts," Dec. Dig. (Key No.) §§ 90, 93, 97; Cent. Dig. §§ 318, 329–333, 338.*

court of last resort furnish imperative and binding precedents for all the lower courts.[62] But the rule also has a much wider scope. Thus, when a construction has been given to a clause or provision of the Constitution of the United States or of an act of Congress by the Supreme Court of the United States, it is the best and only evidence of its meaning, and the courts of the various states not only may, but absolutely must, follow and adopt it in cases before them where the same question of interpretation comes into controversy.[63] Conversely, where a statute of a state has received a settled judicial construction by the decisions of its own courts, those decisions will be accepted as authoritative by the courts of the United States, and the construction will be regarded as authentic, and will be adopted and followed without inquiry into its soundness.[64]

It is also settled that the readoption or re-enactment of a statute, after it has received a judicial construction, in effect enacts the construction as a part of the statute, as it amounts to a legislative declaration that the original construction was correct and in accordance with its meaning. It is presumed that the law-making body was aware of the fact of such construction, and would have changed the wording of the law if it had desired to alter the interpretation.[65]

[62] Attorney General ex rel. Cushing v. Lum, 2 Wis. 507. *See "Courts," Dec. Dig. (Key No.) §§ 90, 93, 97; Cent. Dig. §§ 318, 329–333, 338.*

[63] Black v. Lusk, 69 Ill. 70; Towle v. Forney, 14 N. Y. 423. *See "Courts," Dec. Dig. (Key No.) §§ 90, 93, 97, 366; Cent. Dig. §§ 318, 329–333, 338, 954–968.*

[64] McKeen v. Delancy, 5 Cranch, 22, 3 L. Ed. 25; Leffingwell v. Warren, 2 Black, 599, 17 L. Ed. 261; Bucher v. Cheshire R. Co., 125 U. S. 555, 8 Sup. Ct. 974, 31 L. Ed. 795; Cornell University v. Fiske, 136 U. S. 152, 10 Sup. Ct. 775, 34 L. Ed. 427; Dundee Mortg. T. I. Co. v. Parrish (C. C.) 24 Fed. 197; Gatewood v. North Carolina, 203 U. S. 531, 27 Sup. Ct. 167, 51 L. Ed. 305. *See "Courts," Dec. Dig. (Key No.) §§ 90, 93, 97, 366; Cent. Dig. §§ 318, 329–333, 338, 954–968.*

[65] Tennessee Coal, Iron, & R. Co. v. Roussell, 155 Ala. 435, 46 South. 866, 130 Am. St. Rep. 56; Hart v. Hart, 31 Colo. 333, 73 Pac. 35. And see infra, chapter XVI. Where a section of a Code has been codified from a decision of the Supreme Court, it will be construed in the light of such decision, unless its language imperatively

Again, if the question at issue in a given case is to be governed by the statutory law of a foreign state, and its terms or phraseology are at all doubtful or ambiguous, the court will examine the judicial decisions of the highest court of that state, and if it appears that they have placed an interpretation upon the doubtful clauses or parts of the statute, that interpretation will be accepted as authoritative and will be adopted and followed without further question.[66]

EXECUTIVE CONSTRUCTION

94. A practical construction put upon a doubtful or ambiguous statute by the officers of the executive department, who are charged with its execution, if long acted upon and generally acquiesced in, is regarded as strong evidence of the true meaning of the law; and though it is not binding upon the courts, they will not interpret the law differently, unless there are weighty reasons for so doing.

The executive and administrative officers of the government are bound to give effect to the laws which regulate their duties and define the sphere of their activities, and in so doing, they must necessarily put their own construction

demands a different construction. Calhoun v. Little, 106 Ga. 336, 32 S. E. 86, 43 L. R. A. 630, 71 Am. St. Rep. 254. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig. § 306.*

[66] McManus v. Lynch, 28 App. D. C. 381; Blaine v. Curtis, 59 Vt. 120, 7 Atl. 708, 59 Am. Rep. 702; Jessup v. Carnegie, 80 N. Y. 441; Lane & Co. v. Watson, 51 N. J. Law, 186, 17 Atl. 117; Van Matre v. Sankey, 148 Ill. 536, 36 N. E. 628, 23 L. R. A. 665, 39 Am. St. Rep. 196; Blumle v. Kramer, 14 Okl. 366, 79 Pac. 215. And see infra, chapter XVI. Though the ecclesiastical law of England is no part of the common law adopted in New York, the courts of that state, in determining the effect of a state of facts arising under a statute relating to actions for separation, may consider the effect given to such facts by the ecclesiastical court, which had jurisdiction of the same subject. Hawkins v. Hawkins, 193 N. Y. 409, 86 N. E. 468, 19 L. R. A. (N. S.) 468, 127 Am. St. Rep. 979. *See "Courts," Dec. Dig. (Key No.) § 95; Cent. Dig. §§ 322, 323; "Statutes," Cent. Dig. § 256.*

upon such acts. When the courts shall have interpreted the laws, these officers are of course bound to accept and abide by their decisions. But in advance of such judicial construction, they must interpret the statutes for themselves and to the best of their own abilities.[67] Hence it frequently happens that the judicial tribunals, when called upon to construe the acts of the legislature, will have their attention directed to a uniform practical construction put upon such acts by the executive department for its own guidance, under which official action has been regulated and rights fixed. Now such practical constructions are never binding upon the courts. The courts cannot be controlled by them, for the reason that the courts alone are invested with the power and charged with the duty of putting a final and authoritative interpretation upon the laws.[68] And if the statute to be construed is a recent one—so that official action cannot be seriously deranged, nor private rights be very much affected, by a change in its interpretation—the mere fact that subordinate officers have already begun to read it in a certain way and to regulate their actions accordingly will have no weight or influence with the courts in their search for the true meaning of the law.[69]

But it is a rule, announced by the Supreme Court of the United States at an early day, and which has since been followed in numerous cases both in the federal and state courts, that the contemporaneous construction put upon a statute by the officers who have been called upon to carry it into effect, made the basis of their constant and uniform practice for a long period of time, and generally acquiesced

[67] United States v. Lytle, 5 McLean, 9, Fed. Cas. No. 15,652. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[68] Smoot v. Bankers' Life Ass'n, 138 Mo. App. 438, 120 S. W. 719; State ex rel. Pindall v. Ross, 55 Wash. 242, 104 Pac. 216; Bloxham v. Consumers' Electric Light, etc., Co., 36 Fla. 519, 18 South. 444, 29 L. R. A. 507, 51 Am. St. Rep. 44; Gray v. Foster (Ind. App.) 92 N. E. 7. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[69] Ewing v. Ainger, 97 Mich. 381, 56 N. W. 767; Employers' Liability Assur. Co. v. Commissioner of Insurance, 64 Mich. 614, 31 N. W. 542. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

in, and not questioned by any suit brought, or any public or private action instituted, to test and settle the construction in the courts, is entitled to great respect, and if the statute is doubtful or ambiguous, such practical construction ought to be accepted as in accordance with the true meaning of the law, unless there are very cogent and persuasive reasons for departing from it.[70]

[70] Stuart v. Laird, 1 Cranch, 299, 2 L. Ed. 115; United States v. Gilmore, 8 Wall. 330, 19 L. Ed. 396; United States v. Hill, 120 U. S. 169, 7 Sup. Ct. 510, 30 L. Ed. 627; Merritt v. Cameron, 137 U. S. 542, 11 Sup. Ct. 174, 34 L. Ed. 772; Hahn v. United States, 107 U. S. 402, 2 Sup. Ct. 494, 27 L. Ed. 527; Robertson v. Downing, 127 U. S. 607, 8 Sup. Ct. 1328, 32 L. Ed. 269; United States v. Philbrick, 120 U. S. 52, 7 Sup. Ct. 413, 30 L. Ed. 559; United States v. Cerecedo Hermanos Y. Compania, 209 U. S. 337, 28 Sup. Ct. 532, 52 L. Ed. 821; Sells v. United States, 36 Ct. Cl. 94; Wetmore v. State, 55 Ala. 198; Copper Queen Consol. Min. Co. v. Territorial Board of Equalization, 9 Ariz. 383, 84 Pac. 511; United States ex rel. Wedderburn v. Bliss, 12 App. D. C. 485; Payne v. Houghton, 22 App. D. C. 234; United States v. Day, 27 App. D. C. 458; State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 South. 929; People ex rel. Badger v. Loewenthal, 93 Ill. 191; Harrison v. People, 97 Ill. App. 421; Louisville & E. Mail Co. v. Barbour, 8 Ky. Law Rep. 436; Auditor of Public Accounts v. Cain, 61 S. W. 1016, 22 Ky. Law Rep. 1888; Attorney General v. Glaser, 102 Mich. 405, 61 N. W. 648; Frey v. Michie, 68 Mich. 323, 36 N. W. 184; Westbrook v. Miller, 56 Mich. 148, 22 N. W. 256; O'Connor v. Gertgens, 85 Minn. 481, 89 N. W. 866; Ross v. Kansas City, St. J. & C. B. R. Co., 111 Mo. 18, 19 S. W. 541; Ewing v. Vernon County, 216 Mo. 681, 116 S. W. 518; State v. Sheldon, 79 Neb. 455, 113 N. W. 208; Rohrer v. Hastings Brewing Co., 83 Neb. 111, 119 N. W. 27; Douglas County v. Vinsonhaler, 82 Neb. 810, 118 N. W. 1058; Wyatt v. State Board of Equalization, 74 N. H. 552, 70 Atl. 387; Bank of Utica v. Mersereau, 3 Barb. Ch. (N. Y.) 528, 49 Am. Dec. 189; People v. City of Buffalo (Sup.) 84 N. Y. Supp. 434; In re Board of Street Opening, 12 Misc. Rep. 526, 33 N. Y. Supp. 594; Hoffman v. County Com'rs of Pawnee County, 3 Okl. 325, 41 Pac. 566; Smith v. Bryan, 100 Va. 199, 40 S. E. 652; Atlantic & D. Ry. Co. v. Lyons, 101 Va. 1, 42 S. E. 932; Virginia Coal & Iron Co. v. Keystone Coal & Iron Co., 101 Va. 723, 45 S. E. 291; Regan v. School Dist. No. 25 of Snohomish County, 44 Wash. 523, 87 Pac. 828; State ex rel. Bashford v. Frear, 138 Wis. 536, 120 N. W. 216; Daniel v. Simms, 49 W. Va. 554, 39 S. E. 690; Commonwealth, for Use of City of Louisville, v. Ross, 135 Ky. 315, 122 S. W. 161; Musgrove v. Baltimore & O. R. Co., 111 Md. 629, 75 Atl. 245; Van Veen v. Graham County (Ariz.) 108 Pac. 252; Ballinger v. United States ex rel. Ness, 33 App. D. C. 302; State ex rel. Reardon v. Hooker, 26 Okl. 460, 109

For example, a question arose in the federal Supreme Court as to the construction of an act of Congress providing for the retirement of "officers of the navy." It was contended that this applied only to commissioned officers, and not to warrant officers. The court said: "It must be conceded that, were the question a new one, the true construction of the section would be open to doubt. But the findings of the Court of Claims show that soon after the enactment of the act the President and the Navy Department construed the section to include warrant as well as commissioned officers, and that they have since that time uniformly adhered to that construction, and that under its provisions large numbers of warrant officers have been retired. This contemporaneous and uniform interpretation is entitled to weight in the construction of the law, and, in a case of doubt, ought to turn the scale." [71] So again, where the Secretary of the Treasury gives a certain construction to a statute concerning the distribution of fines, penalties, and forfeitures, and officers interested adversely apparently acquiesce in the decision through a long period of time, and large sums are accordingly distributed and paid out of the treasury, the courts will not interfere by giving a different construction to the statute, at least where that adopted by the Secretary is not unreasonable.[72] So, where the language of the tariff acts has been substantially the same in respect to certain goods, a construction uniformly followed by the Treasury Department for nearly fifty years will not be disregarded except for very strong reasons.[73] A uniform construction put upon a land grant act by the Land Office and the Department of the Interior for a period of eighteen years, and under which lands have been put upon

Pac. 527. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[71] Brown v. United States, 113 U. S. 568, 5 Sup. Ct. 648, 28 L. Ed. 1079. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[72] Hahn v. United States, 14 Ct. Cl. 305. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[73] United States v. Wotten (C. C.) 50 Fed. 693. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

the market and sold, should have considerable weight in determining the meaning of doubtful language in the statute.[74] And generally, while the decisions of the Land Office are not binding on the federal courts, yet, when the construction of a doubtful or obscure statute by that office has been uniform, the court will accept such interpretation as the proper one.[75] Similar respect is paid and similar effect accorded to constructions of statutes, made in the practical conduct of business by the Commissioner of Patents,[76] the Interstate Commerce Commission,[77] the Attorney General of the state or of the United States,[78] the Commissioner or Superintendent of Insurance,[79] the State Comptroller, and other accounting and auditing officers of the state government.[80]

For the same reasons, the practical construction given to a state statute by the public officers of the state, although it cannot be admitted as controlling, when the federal courts are called upon to construe the statute, is not to be overlooked, and should perhaps be regarded as decisive in a case of doubt, or where the error of such practical construction is not apparent.[81]

[74] United States v. Union Pac. Ry. Co., 148 U. S. 562, 13 Sup. Ct. 724, 37 L. Ed. 560. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[75] United States v. Burkett (D. C.) 150 Fed. 208. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[76] Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1, 15 Sup. Ct. 508, 39 L. Ed. 601. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[77] Greenwald v. Weir, 130 App. Div. 696, 115 N. Y. Supp. 311; Schuyler v. Southern Pac. Co. (Utah) 109 Pac. 458. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[78] Johnson v. Ballou, 28 Mich. 379; State v. Brady (Tex. Civ. App.) 114 S. W. 895; State v. Gunter, 36 Tex. Civ. App. 381, 81 S. W. 1028. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[79] Commonwealth v. Gregory, 121 Ky. 256, 89 S. W. 168. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[80] Bloxham v. Consumers' Electric Light & Street R. Co., 36 Fla. 519, 18 South. 444, 29 L. R. A. 507, 51 Am. St. Rep. 44. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[81] Union Ins. Co. v. Hoge, 21 How. 35, 16 L. Ed. 61. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

It is only in cases of doubt or ambiguity that the courts may allow themselves to be guided or influenced by an executive construction of a statute. If the words of the law are clear and precise, and the true meaning evident on the face of the enactment, there is no room for construction. In such case, no executive or administrative interpretation of the act should be allowed to defeat the plain meaning and purpose of the statute as the courts understand them. If such an interpretation is plainly erroneous, it is the duty of the courts to disregard it, no matter how long it may have prevailed, or how universally it may have been accepted, or what interests may be affected, and to construe the law according to its real and true meaning.[82] And it is even said that, to justify a court in being guided by the practical executive construction of a statute, the ambiguity on the face of it must not be merely captious, but should be so serious as to raise a reasonable doubt in a fair mind reflecting honestly upon the subject.[83] This rule, however, will be somewhat relaxed where great mischief would result from adopt-

[82] Studebaker v. Perry, 184 U. S. 258, 22 Sup. Ct. 463, 46 L. Ed. 528; United States v. Tanner, 147 U. S. 661, 13 Sup. Ct. 436, 37 L. Ed. 321; United States v. Graham, 110 U. S. 219, 3 Sup. Ct. 582, 28 L. Ed. 126; Greely v. Thompson, 10 How. 225, 13 L. Ed. 397; Deming v. McClaughry, 113 Fed. 639, 51 C. C. A. 349; United States ex rel. Daly v. MacFarland, 28 App. D. C. 552; Allen v. United States ex rel. Lowery, 26 App. D. C. 8; People ex rel. v. Shedd, 241 Ill. 155, 89 N. E. 332; Whittemore v. People, 227 Ill. 453, 81 N. E. 427; Eddy v. Morgan, 216 Ill. 437, 75 N. E. 174; Hord v. State, 167 Ind. 622, 79 N. E. 916; Commonwealth v. Owensboro, Falls of Rough & G. R. R. Co., 95 Ky. 60, 23 S. W. 868; State ex rel. v. Henry, 87 Miss. 125, 40 South. 152, 5 L. R. A. (N. S.) 340; In re Manhattan Sav. Inst., 82 N. Y. 142; Moriarty v. City of New York, 59 Misc. Rep. 204, 110 N. Y. Supp. 842; People ex rel. West Side Electric Co. v. Consolidated Telegraph & Electrical Subway Co., 187 N. Y. 58, 79 N. E. 892; Fire Ass'n of Philadelphia v. Love, 101 Tex. 376, 108 S. W. 810; State ex rel. Fidelity & Casualty Co. v. Fricke, 102 Wis. 107, 78 N. W. 455; Travelers' Ins. Co. v. Fricke, 94 Wis. 258, 68 N. W. 958. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[83] City of New York v. New York City Ry. Co., 193 N. Y. 543, 86 N. E. 565. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

ing a new construction,[84] or where the changed construction would operate retrospectively and impose on citizens or corporations taxes or charges for doing business to which they were not subjected under the construction which obtained when such business was entered into and while it was being conducted.[85]

LEGISLATIVE CONSTRUCTION

95. A construction put upon a statute by the legislature itself, by a subsequent act or resolution, cannot control the judgment of the courts; but it is entitled to weight and consideration in case of doubt or obscurity.

The opinion of the legislative body concerning the true meaning and intention of a doubtful or ambiguous statute, as manifested by the passage of subsequent acts or resolutions relating to the same subject, is persuasive evidence and entitled to the respectful consideration of the courts;[86] and if such a legislative construction was contemporaneous, or nearly so, and has been long continued and acquiesced in, it should be considered as of great weight.[87] But the

[84] Rogers v. Goodwin, 2 Mass. 475; Clark v. Moody, 17 Mass. 145; Holmes v. Hunt, 122 Mass. 505, 23 Am. Rep. 381; Opinion of the Justices, 126 Mass. 557. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[85] State v. Comptoir National D'Escompte de Paris, 51 La. Ann. 1272, 26 South. 91. *See "Statutes," Dec. Dig. (Key No.) § 219; Cent. Dig. §§ 296, 297.*

[86] Spencer v. United States, 169 Fed. 562, 95 C. C. A. 60; City Council of City and County of Denver v. Board of Com'rs of Adams County, 33 Colo. 1, 77 Pac. 858; Middleton v. Greeson, 106 Ind. 18, 5 N. E. 755; Village of Morgan Park v. Knopf, 210 Ill. 453, 71 N. E. 340; Crohn v. Kansas City Home Tel. Co., 131 Mo. App. 313, 109 S. W. 1068; Commonwealth v. Miller, 5 Dana (Ky.) 320; Philadelphia & E. R. Co. v. Catawissa R. Co., 53 Pa. 60; Robertson v. Baxter, 57 Mich. 127, 23 N. W. 711; State ex rel. Schenck v. Board of Com'rs of Shawnee County, 83 Kan. 199, 110 Pac. 92. *See "Statutes," Dec. Dig. (Key No.) § 220; Cent. Dig. § 298.*

[87] State ex inf. Hadley ex rel. Wayland v. Herring, 208 Mo. 708,

function of interpreting the laws does not belong to the legislature, but to the courts, and therefore, while due consideration must be given to the legislative construction of a statute, it has no judicial force, and is not binding or conclusive on a court of last resort,[88] except in the case where it is incorporated in the statute itself, in the form of a definition or an interpretation clause, in which event it is, of course, a part of the law and must be so considered.[89] Thus, while the legislature cannot, by resolution, change the obligation of a contract made under a previous act, yet if they instruct a public officer as to his duties under the contract, such legislative expression of opinion as to what has been done, and the resulting duties of the officer, may be resorted to in determining the intention of the legislature in passing the act.[90] But the enactment of a specific provision on a given subject does not, of itself, prove that the law on that subject was different before; for such enactment may have been made in affirmance of the existing law, and to remove doubts.[91]

106 S. W. 984. *See "Statutes," Dec. Dig. (Key No.) § 220; Cent. Dig. § 298.*

[88] Gibson v. People, 44 Colo. 600, 99 Pac. 333; Village of Morgan Park v. Knopf, 210 Ill. 453, 71 N. E. 340; Deutschman v. Town of Charlestown, 40 Ind. 449; Frey v. Michie, 68 Mich. 323, 36 N. W. 184; Smith v. Town of Westerly, 19 R. I. 437, 35 Atl. 526; State v. Lancashire Fire Ins. Co., 66 Ark. 466, 51 S. W. 633, 45 L. R. A. 348; Roche v. Jordan (C. C.) 175 Fed. 234; State v. Dana, 138 Iowa, 244, 115 N. W. 1115. *See "Statutes," Dec. Dig. (Key No.) § 220; Cent. Dig. § 298.*

[89] Commonwealth v. Curry, 4 Pa. Super. Ct. 356; Rossmiller v. State, 114 Wis. 169, 89 N. W. 839, 58 L. R. A. 93, 91 Am. St. Rep. 910. And see supra, p. 269. *See "Statutes," Dec. Dig. (Key No.) § 220; Cent. Dig. § 298.*

[90] Georgia Penitentiary Co. v. Nelms, 65 Ga. 67. *See "Statutes," Dec. Dig. (Key No.) § 220; Cent. Dig. § 298.*

[91] Inhabitants of Montville v. Haughton, 7 Conn. 543. *See "Statutes," Dec. Dig. (Key No.) § 220; Cent. Dig. § 298.*

JOURNALS OF LEGISLATURE

96. In aid of the interpretation of an ambiguous statute, or one which is susceptible of several different constructions, it is proper for the courts to study the history of the bill in its progress through the legislature, by examining the legislative journals.

An obscure or ambiguous law is often rendered clear and intelligible by a consideration of the various steps which led to its final passage, as shown by the journals of the legislative body, and a resort to these sources of information by the courts, in the endeavor to ascertain the intention of the legislature and interpret the statute accordingly, is sanctioned by the great majority of the decisions.[92]

Thus the court in Indiana remarks that "it has never been held by this court that, for the purpose of construction or interpretation, and with the view of ascertaining the legislative will and intention in the enactment of a law, the courts may not properly resort to the journals of the two legislative bodies to learn therefrom the history of the law in question, from its first introduction as a bill until its final passage and approval. Where, as in this case, a statute has been enacted which is susceptible of several widely differing constructions, we know of no better means for ascertaining the will and intention of the legislature than that which is afforded, in this case, by the history of the statute,

[92] Stout v. Grant County Com'rs, 107 Ind. 343, 8 N. E. 222; Klemm v. Fread (Ind. App.) 91 N. E. 256; State v. Kelly, 71 Kan. 811, 81 Pac. 450, 40 L. R. A. 450; Ellis v. Boer, 150 Mich. 452, 114 N. W. 239; State v. Balch, 178 Mo. 392, 77 S. W. 547; Ex parte Helton, 117 Mo. App. 609, 93 S. W. 913; State ex rel. Hay v. Hindson, 40 Mont. 354, 106 Pac. 362; Wyatt v. State Board of Equalization, 74 N. H. 552, 70 Atl. 387; State v. Burr, 16 N. Dak. 581, 113 N. W. 705; Slingluff v. Weaver, 66 Ohio St. 621, 64 N. E. 574; Malone v. Williams, 118 Tenn. 390, 103 S. W. 798, 121 Am. St. Rep. 1002; Ex parte Keith, 47 Tex. Cr. R. 283, 83 S. W. 683; State v. Rutland R. Co., 81 Vt. 508, 71 Atl. 197; Burdick v. Kimball, 53 Wash. 198, 101 Pac. 845; Scouten v. City of Whatcom, 33 Wash. 273, 74 Pac. 389. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

as found in the journals of the two legislative bodies." [93] So also, in Kansas, it is said that the courts will take judicial notice, without proof, of all the laws of the state; and in so doing, they will take judicial notice of what the books of published laws contain, of what the enrolled bills contain, of what the legislative journals contain, and indeed of everything that is allowed to affect the validity, or affect or modify the meaning, of any law in any respect whatever.[94] And a learned judge in Ohio says: "In cases of doubt as to the proper interpretation of wills and contracts, it is a familiar rule that evidence is admissible to show the circumstances surrounding the party or parties at the time of the making of the instrument to be interpreted, and thus to place the court upon the standpoint of the party or parties whose intentions are to be ascertained, and to enable the court to see things in the light in which he or they saw them. And on principle, I know of no good reason why, on a question like this, we may not, in analogy to the rule referred to, look into the history and progress of the bill which finally ripened into this act, during its pendency in, and passage by, the general assembly, as shown by the journals of the two houses of that body." [95] In the case of Blake v. National City Bank,[96] we find an act of Congress, apparently contradictory in terms, interpreted by a reference to the journals of Congress, whereby it appeared that the peculiar phraseology was the result of an amendment introduced without due reference to the language used in the original bill. In another case, a statute purported to

[93] Edger v. Board of Com'rs of Randolph County, 70 Ind. 331. See, also, Walter A. Wood Mowing & Reaping Mach. Co. v. Caldwell, 54 Ind. 270, 23 Am. Rep. 641; Hill's Adm'rs v. Mitchell, 5 Ark. 608. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

[94] In re Division of Howard County, 15 Kan. 194. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

[95] Fosdick v. Mayor, etc., of Incorporated Village of Perrysburg, 14 Ohio St. 472. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

[96] 23 Wall. 307, 23 L. Ed. 119. And see Gardner v. Collector, 6 Wall. 499, 18 L. Ed. 890. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

relate to the affairs of counties having a population of "ninety thousand (*50*,000) and over." It appeared from the journals of the legislature that the bill as passed by the House contained figures in the parenthesis corresponding with the written number, ninety thousand, and that an amendment was passed by the Senate to strike out the figures "90,000" and substitute "50,000," but this amendment was rejected by the House and withdrawn by the Senate. Thus the court was enabled to decide that the written words "ninety thousand," as appearing in the statute, must prevail over the contrariant figures, that being in accordance with the ultimate intention of the legislature.[97]

The doctrine above stated does not pass entirely without contradiction. There are some cases in the reports which deny that the courts may properly consult the legislative journals in the search for the true meaning of a statute.[98] But these decisions are opposed to the weight of authority.

It will be observed that this question is an entirely different matter from resorting to the legislative journals to ascertain whether an act was constitutionally passed; that is, passed with the requisite majority, or after the required number of readings, or with a call of the house on its final passage, or otherwise in conformity with the requirements of the constitution. On this point, the rule settled by a majority of the courts is that it is competent to go behind the enrolled bill and consult the journals, but that the act will not be declared void for lack of compliance with the con-

[97] Weaver v. Davidson County, 104 Tenn. 315, 59 S. W. 1105. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

[98] Bank of Pennsylvania v. Commonwealth, 19 Pa. 144; State v. Under-Ground Cable Co. (N. J. Ch.) 18 Atl. 581; Tennant v. Kuhlemeier, 142 Iowa, 241, 120 N. W. 689. In Southwark Bank v. Commonwealth, 26 Pa. 446, it is said: "The journals are not evidence of the meaning of a statute, because this must be ascertained from the language of the act itself and the facts connected with the subject on which it is to operate." But the remark was obiter. And in the same case it was held that the legislative journals are evidence for the purpose of identifying a bill to which another act of the legislature referred. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

stitutional forms, unless their nonobservance is affirmatively shown by the journals. If the journals are silent as to these matters, it will be presumed that the legislature complied with all the constitutional requisites. In any event, no evidence can be received to contradict the journals.[99]

Reports and Papers of Committees

It is held in England, and was at one time generally agreed to by those of the American courts which had been called on to decide the question, that reports or recommendations made to the legislative bodies by their respective committees in relation to a pending measure could not be accepted as pertinent evidence of the meaning which the legislature intended to attach to the statute.[100] But the prevalent judicial opinion is now the other way; the courts inclining to the broader view that, if there is real doubt about the meaning of the law, they are not debarred from consulting any proper sources of information, including especially those which are of a quasi official or authoritative nature. This more liberal view appears to be agreed on by the courts of the United States;[101] and mention should be made of a case in Louisiana, where it was held that a report of a committee, presented and adopted with an ordinance of a municipal corporation, might be regarded as a preamble showing its reasons, and might therefore be considered in aid of its construction.[102] So, also, in a case in Wisconsin, it was held that a report of the judiciary committee of the Senate, to which a question of law arising un-

[99] Black, Const. Law (3d Ed.) 69, 348.

[100] Steele v. Midland Ry. Co., L. R. 1 Ch. 275; Donegall v. Layard, 8 H. L. Cas. 460; Bank of Pennsylvania v. Commonwealth, 19 Pa. 144. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

[101] Mosle v. Bidwell, 130 Fed. 334, 65 C. C. A. 533; United States v. Chicago & N. W. R. Co. (D. C.) 157 Fed. 616; Smith v. United States, 19 Ct. Cl. 690. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

[102] Second Municipality of New Orleans v. Morgan, 1 La. Ann. 111. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

der a statute was referred by resolution of that body, was proper to be considered as part of the practical exposition which the statute had received, and as showing the meaning of the law as understood by the legislature itself.[103] But the effect of a statute actually passed by Congress cannot be narrowed by reference to a bill which was never voted on, but was merely proposed in committee.[104] And while the reports of committees possess a semiofficial character, it is not so with the papers which a committee may have had before them, such as reports of administrative officers or commissions, or letters and petitions addressed to the committee, and these have no weight and should not be considered in seeking the proper construction of a statute.[105]

OPINIONS OF LEGISLATORS

97. Opinions of individual members of the legislature which passed a statute, expressed by them in debate or otherwise, as to the meaning, scope, or effect of the act, cannot be accepted by the courts as authority on the question of its interpretation, and, if received at all, are entitled to but little weight

This doctrine has often been asserted by the courts, and in the most unequivocal terms.[106] Thus, the Supreme

[103] Harrington v. Smith, 28 Wis. 43. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

[104] United States v. Allen, 179 Fed. 13, 103 C. C. A. 1. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27, 290, 299, 384, 385.*

[105] Browne v. Turner, 174 Mass. 150, 54 N. E. 510; Thomas v. F. B. Vandegrift & Co., 162 Fed. 645, 89 C. C. A. 437. *See "Statutes," Dec. Dig. (Key No.) § 285; Cent. Dig. §§ 17, 27; 290, 299, 384, 385.*

[106] District of Columbia v. Washington Market Co., 108 U. S. 243, 2 Sup. Ct. 543, 27 L. Ed. 714; United States v. Union Pac. R. Co., 91 U. S. 72, 23 L. Ed. 224; United States v. Trans-Missouri Freight Ass'n, 166 U. S. 290, 17 Sup. Ct. 540, 41 L. Ed. 1007; Red C. Oil Mfg. Co. v. Board of Agriculture (C. C.) 172 Fed. 695; Pacific Coast S. S. Co. v. United States, 33 Ct. Cl. 36; Leese v. Clark, 20 Cal. 387, 425; McGarrahan v. Maxwell, 28 Cal. 75, 95; Cortelyou v. United States ex rel. Thorpe, 32 App. D. C. 20; Stewart v. Atlanta Beef

Court of the United States declares: "In expounding this law, the judgment of the court cannot in any degree be influenced by the construction placed upon it by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed." [107] So, also, the Supreme Court of Pennsylvania observes: "In giving construction to a statute, we cannot be controlled by the views expressed by a few members of the legislature who expressed verbal opinions on its passage. Those opinions may or may not have been entertained by the more than hundred members who gave no such expressions. The declarations of some, and the assumed acquiescence of others therein, cannot be adopted as a true interpretation of the statute. Keeping in mind the previous law, the supposed evil, and the remedy desired, we must consider the language of the statute, and the fair and reasonable import thereof." [108] So again: "It has been insisted in the argument that the court, with a view to a clearer understanding of the language used in the section, is at liberty to consult the record of the debates in the

Co., 93 Ga. 12, 18 S. E. 981, 44 Am. St. Rep. 119; Eddy v. Morgan, 216 Ill. 437, 75 N. E. 174; Tennant v. Kuhlemeier, 142 Iowa, 241, 120 N. W. 689; State v. Burk, 88 Iowa, 661, 56 N. W. 180; Bernier v. Bernier, 72 Mich. 43, 40 N. W. 50; Taylor v. Taylor, 10 Minn. 107 (Gil. 81); Forrest v. Forrest, 10 Barb. (N. Y.) 46; Lenhart v. Cambria County, 29 Pa. Super. Ct. 350; City of Richmond v. Supervisors of Henrico County, 83 Va. 204, 2 S. E. 26; Northern Trust Co. v. Snyder, 113 Wis. 516, 89 N. W. 460, 90 Am. St. Rep. 867; Queen v. Whittaker, 2 Car. & K. 636; Attorney General v. Sillem, 2 Hurl. & C. 431, 521. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[107] Aldridge v. Williams, 3 How. 9, 24, 11 L. Ed. 469. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[108] County of Cumberland v. Boyd, 113 Pa. 52, 4 Atl. 346. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

houses of Congress while this section was under discussion. * * * But we have seen no authority that would justify us in appealing to so uncertain a source for guidance as the remarks of members in debate. It is well known that a measure is sometimes advocated by a person upon grounds which another may assign as the cause of his opposition; and in this case there can be no more striking proof of the fallacious character of such evidence than the fact that both sides refer to different portions of the same debate in support of their respective views." [109]

Nevertheless, the courts should not close their eyes to any light which may fall upon the pages of an obscure statute. The opinion of a member of the legislature, if he be a man of learning and of acute and discriminating intelligence, may be of quite as much persuasive force as the opinion of a judge delivered in a court of co-ordinate jurisdiction. But the latter is authority, while the former is not. Hence, if we carefully distinguish between those sources of information as to the meaning of a statute which are in their nature authoritative and those which are entitled only to the force of an argument, such as may combine with other arguments and considerations and tend to lead the mind to a certain conclusion, it may be that place will be found for the opinions of individual legislators in the list of extraneous aids which are available to the courts on questions of statutory construction. And cases are not wanting which have recognized the admissibility of such opinions, with this restriction and limitation.[110] Thus, in a case in a federal circuit court, where the question was as to the power of the United States court in the Indian Territory to impanel a grand jury, under the act of Congress creating the court, the judge allowed himself to be consid-

[109] District of Columbia v. Washington Market Co., 3 MacArthur (D. C.) 559. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[110] Shallus v. United States, 162 Fed. 653, 89 C. C. A. 445; Wadsworth v. Boysen, 148 Fed. 771, 78 C. C. A. 437; Carter v. Hobbs (D. C.) 92 Fed. 594; Truelove v. City of Washington, 169 Ind. 291, 82 N. E. 530; Maynard v. Johnson, 2 Nev. 25. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

erably influenced in his decision by the opinion expressed by the chairman of the judiciary committee of the House of Representatives in presenting to the House the final conference report.[111] And in England, during the argument of a case before the Court of Appeal, counsel proposed to cite as an authority on the interpretation of a statute the opinion of the Lord Chancellor as to its construction, contained in a speech delivered by him during a debate in the House of Lords upon the third reading of another act. It was held by two of the judges (the third doubting) that the speech might be read for that purpose.[112] So, in a case in Pennsylvania, Chief Justice Gibson stated that he was a member of the legislature at the time the act under consideration was passed, and that he knew that it was intended to operate in a certain manner.[113] Moreover, it is said that the courts may advert to statements made by individual members of the legislature, as part of the history of the times, and for the purpose of meeting an objection that a word used could have no operation at all, if it were not given a certain meaning contended for.[114]

MOTIVES OF LEGISLATURE

98. In the interpretation of statutes, it is not proper or permissible to inquire into the motives which influenced the legislative body, except in so far as such motives are disclosed by the statute itself.[115]

[111] Ex parte Farley (C. C.) 40 Fed. 66. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[112] Queen v. Bishop of Oxford, L. R. 4 Q. B. Div. 525. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[113] Moyer v. Gross, 2 Pen. & W. 171. And see (a somewhat similar case) In re Mew, 31 L. J. (N. S.) Bankruptcy, 89. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[114] United States v. Wilson (D. C.) 58 Fed. 768. And see Ho Ah Kow v. Nunan, 5 Sawy. 552, Fed. Cas. No. 6,546, holding that the statements of the members of a legislative body in debate on the passage of a law may be resorted to for the purpose of ascertaining its general object, though not for the purpose of explaining the meaning of the terms used. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[115] Holme v. Guy, L. R. 5 Ch. Div. 901; Keyport & M. P. Steam-

"The rule is general, with reference to the enactments of all legislative bodies, that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferable from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives, considered as the moral inducements for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile." [116] Hence, for example, it cannot be shown, for the purpose of avoiding an act of the legislature, that the act was passed for insufficient or improper reasons.[117] Nor, it is said, can the magnitude of the consideration, political or financial, which may operate upon the legislative mind as an inducement for grants and franchises conferred by statute, change the character of the legislation, or vary the rule of construction by which the rights of the grantees must be measured.[118] But it is said that this rule is somewhat relaxed in its application to the by-laws or ordinances of municipal corporations.[119]

boat Co. v. Farmers' Transp. Co., 18 N. J. Eq. 13; Kountze v. Omaha, 5 Dill. 443, Fed. Cas. No. 7,928; City of Richmond v. Supervisors of Henrico County, 83 Va. 204, 2 S. E. 26; People v. Shepard, 36 N. Y. 285; Fletcher v. Peck, 6 Cranch, 87, 3 L. Ed. 162; Williams v. Nashville, 89 Tenn. 487, 15 S. W. 364; Pacific Coast S. S. Co. v. United States, 33 Ct. Cl. 36; City of Lebanon v. Creel, 109 Ky. 363, 59 S. W. 16. But the evil or mischief which a statute is designed to cure may be considered in construing it. State v. Hall, 141 Wis. 30, 123 N. W. 251. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[116] Soon Hing v. Crowley, 113 U. S. 703, 5 Sup. Ct. 730, 28 L. Ed. 1145. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[117] City of Wichita v. Burleigh, 36 Kan. 34, 12 Pac. 332. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[118] Union Pac. R. Co. v. United States, 10 Ct. Cl. 548. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

[119] Glasgow v. St. Louis, 107 Mo. 198, 17 S. W. 743. *See "Statutes," Dec. Dig. (Key No.) § 216; Cent. Dig. § 292.*

CHAPTER VIII

CONSTRUCTION OF STATUTE AS A WHOLE AND WITH REFERENCE TO EXISTING LAWS

99. Statute to be Construed as a Whole.
100. Giving Effect to Entire Statute.
101–103. Conflicting Clauses and Provisions.
104. Statutes in Pari Materia.
105. Harmonizing the Laws.
106. Presumption Against Unnecessary Change of Laws.
107. Presumption Against Implied Repeal of Laws.

STATUTE TO BE CONSTRUED AS A WHOLE

99. In the construction of a statute, in order to determine the true intention of the legislature, the particular clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts.

The foregoing rule embodies the principle of what is sometimes called "comparative interpretation"; that is, that method of interpretation which seeks to arrive at the meaning of a statute, or, indeed, of any other writing, by comparing its several parts with each other, and also by comparing it as a whole with other like documents proceeding from the same source and referring to the same general subject.[1] It is a familiar and fundamental doctrine, and is expressed in several maxims, both of the common and the civil law, of great antiquity.[2]

[1] Glenn v. York County Com'rs, 6 S. C. 412. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[2] Co. Litt. 381a; 1 Bl. Comm. 89. "Ex tota materia emergat resolutio," that is, the explanation should arise out of the whole subject-matter; the exposition of a statute should be made from all its parts together. Wingate, Maxims, 238. "Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere," it is unjust to decide or to respond as to any particular part of a law without examining the whole of the law. 8 Coke, 117b. "Ex antecedentibus et consequentibus fit optima interpreta-

There are two principal reasons for this rule. In the first place, the force and significance of particular expressions will largely depend upon the connection in which they are found and their relation to the general subject-matter of the law. The legislature must be understood to have expressed its whole mind on the special object to which the legislative act is directed; but the vehicle for the expression of that meaning is the statute, considered as one entire and continuous act, and not as an agglomeration of unrelated clauses. Each clause or provision will be illuminated by those which are cognate to it and by the general tenor of the whole statute, and thus obscurities and ambiguities may often be cleared up by the most direct and natural means. In the second place, effect must be given, if it is possible, to every word and clause of the statute, so that nothing shall be left devoid of meaning or destitute of force. It must be so construed "ut res magis valeat quam pereat." To this end, each provision of the statute should be read in the light of the whole. For the general meaning of the legislature, as gathered from the entire act, may often prevail over that construction which would appear to be the most natural and obvious on the face of a particular clause. It is by this means that contradictions and repugnancies between the different parts of the statute may be avoided. The rule stated is therefore one of primary importance, and it is well established upon the authorities.[3] "The office of a

tio," that is to say, the best interpretation (of part of an instrument) is made from the antecedents and the consequents, or from the preceding and following parts. 2 Co. Inst. 317. The law will judge of a deed or other instrument, consisting of divers clauses or parts, by looking at the whole, and will give to each part its proper office, so as to ascertain and carry out the intention of the parties. Broom, Maxims, 577. The whole instrument is to be viewed and compared in all its parts, so that every part of it may be made consistent and effectual. 2 Kent, Comm. 555. This was also the rule of the expositors of the Roman law. Thus, it is said by Celsus, in the Digest: "Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita judicare vel respondere." Dig. 1, 3, 24. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[3] City of Birmingham v. Southern Express Co., 164 Ala. 529, 51 South. 159; Matthews v. Town of Livermore, 156 Cal. 294, 104 Pac.

good expositor of an act of Parliament," says Lord Coke in the Lincoln College Case,[4] "is to make construction on all the parts together, and not of one part only by itself; nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegerit." "The key to the opening of every law is the reason and spirit of the law—it is the 'animus imponentis,' the intention of the law-maker expressed in the law itself taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, that particular expression is not to be viewed detached

303; International Trust Co. v. Anthony, 45 Colo. 474, 101 Pac. 781, 22 L. R. A. (N. S.) 1002; Dekelt v. People, 44 Colo. 525, 99 Pac. 330; Garfield v. United States, 30 App. D. C. 177; State v. Atkins, 35 Ga. 315, Fed. Cas. No. 5,350; Thompson v. Bulson, 78 Ill. 277; Village of Iuka v. Schlosser, 97 Ill. App. 222; Gilbert v. Morgan, 98 Ill. App. 281; Standard Radiator Co. v. Fox, 85 Ill. App. 389; Cooper v. Metzger, 74 Ind. 544; Crawfordsville & S. W. Turnpike Co. v. Fletcher, 104 Ind. 97, 2 N. E. 243; Boyer v. State, 169 Ind. 691, 83 N. E. 350; State v. Indiana & I. S. R. Co., 133 Ind. 69, 32 N. E. 817, 18 L. R. A. 502; Hasely v. Ensley, 40 Ind. App. 598, 82 N. E. 809; Rohlf v. Kasemeier, 140 Iowa, 182, 118 N. W. 276, 23 L. R. A. (N. S.) 1284; Cleaveland v. Norton, 6 Cush. (Mass.) 380; Commonwealth v. Alger, 7 Cush. (Mass.) 53; Mayor, etc., of City of Baltimore v. Howard, 6 Har. & J. (Md.) 383; McGinnis v. Missouri Car & Foundry Co., 174 Mo. 225, 73 S. W. 586, 97 Am. St. Rep. 553; City of St. Louis v. Lane, 110 Mo. 254, 19 S. W. 533; City of Lincoln v. Janesch, 63 Neb. 707, 89 N. W. 280, 56 L. R. A. 762, 93 Am. St. Rep. 478; State ex rel. Mason v. Mayor, etc., of City of Paterson, 35 N. J. Law, 196; In re Trustees of New York & Brooklyn Bridge, 72 N. Y. 527; Peters Grocery Co. v. Collins Bag Co., 142 N. C. 174, 55 S. E. 90; State v. Hanson, 16 N. D. 347, 113 N. W. 371; Territory ex rel. Sampson v. Clark, 2 Okl. 82, 35 Pac. 882; Riggs v. Polk County, 51 Or. 509, 95 Pac. 5; Commonwealth v. Duane, 1 Bin. (Pa.) 601, 2 Am. Dec. 497; City of Philadelphia v. Barber, 160 Pa. 123, 28 Atl. 644; Lederer Realty Corp. v. Hopkins (R. I.) 71 Atl. 456; State v. Carlisle, 22 S. D. 529, 118 N. W. 1033; Kirk v. Morley Bros. (Tex. Civ. App.) 127 S. W. 1109; Pool v. Utah County Light & Power Co. (Utah) 105 Pac. 289; State v. Central Vermont R. Co., 81 Vt. 463, 71 Atl. 194, 130 Am. St. Rep. 1065; Fox's Adm'rs v. Commonwealth, 16 Grat. (Va.) 1; Bradley Engineering & Mfg. Co. v. Heyburn, 56 Wash. 628, 106 Pac. 170, 134 Am. St. Rep. 1127; Wheeling Gas Co. v. City of Wheeling, 8 W. Va. 320. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[4] 3 Coke, 59b.

from its context in the statute; it is to be viewed in connection with its whole context—meaning by this as well the title and preamble as the purview or enacting part of the statute." [5] "One clause of a statute, apparently conclusive as to some particular thing, may be enlarged or limited by other provisions of the instrument upon the same subject; and in such a case, the intent must be gathered from all the provisions considered together, the interpreter having his eye on the subject-matter of the instrument, and giving effect to each clause of the latter, when it can be done." [6] "In construing acts of Parliament," says Lord Tenterden, "we are to look not only at the language of the preamble, or of any particular clause, but at the language of the whole act. And if we find in the preamble, or in any particular clause, an expression not so large and extensive in its import as those used in other parts of the act, and upon a view of the whole act we can collect, from the more large and extensive expressions used in other parts, the real intention of the legislature, it is our duty to give effect to the larger expressions, notwithstanding the phrases of less extensive import in the preamble or in any particular clause." [7]

A statute should therefore be read with reference to its leading idea, and its general purpose and intention should be gathered from the whole act, and this predominant purpose will prevail over the literal import of particular terms or clauses, if plainly apparent, operating as a limitation upon some and as a reason for expanding the signification of others, so that the interpretation may accord with the spirit of the entire act,[8] and so that the policy and object

[5] Brett v. Brett, 3 Add. Eccl. 210. *See "Statutes," Dec. Dig. (Key No.) §§ 210, 211; Cent. Dig. §§ 287, 288.*

[6] City of San Diego v. Granniss, 77 Cal. 511, 19 Pac. 875. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[7] Bywater v. Brandling, 7 Barn. & C. 643; Burke v. Monroe County, 77 Ill. 610; Torrance v. McDougald, 12 Ga. 526. And see Hagenbuck v. Reed, 3 Neb. 17; People ex rel. Frank v. Board of Sup'rs of city and county of San Francisco, 21 Cal. 668; People v. Burns, 5 Mich. 114. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[8] State ex rel. Minneapolis, St. P. & S. S. M. R. Co. v. Railroad Commission, 137 Wis. 80, 117 N. W. 846; People v. Long Island R.

of the statute as a whole may be made effectual and operative to the widest possible extent.[9] Moreover, the reading of the statute as a whole will often afford the means of correcting apparent mistakes in the wording of particular parts.[10]

Since the object of reading the statute as an entirety is not to determine the validity of any particular part, but to search out the general legislative meaning, it makes no difference that parts or sections of the act may be unconstitutional and therefore invalid; they may be considered in construing the other provisions of the law, in fact, they should not be disregarded.[11] So, also, where part of an act has been repealed, it must, although of no operative force, be considered in construing the rest.[12]

Co., 194 N. Y. 130, 87 N. E. 79; Lime City Bldg., Loan & Sav. Ass'n v. Black, 136 Ind. 544, 35 N. E. 829; Holbrook v. Holbrook, 1 Pick. (Mass.) 248; Inhabitants of Mendon v. Worcester County, 10 Pick. (Mass.) 235; Commonwealth v. Inhabitants of Cambridge, 20 Pick. (Mass.) 267. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[9] Nance v. Southern Ry. Co., 149 N. C. 366, 63 S. E. 116; Chicago, R. I. & P. R. Co. v. State, 84 Ark. 409, 106 S. W. 199. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[10] State ex rel. Leslie v. Bracken, 154 Ala. 151, 45 South. 841. The uumbering of sections in statutes is a purely artificial and unessential arrangement, resorted to for convenieuce only, and does not prevent the construction of the act as a whole. In re Bull's Estate, 153 Cal. 715, 96 Pac. 366. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[11] Swift v. Calnan, 102 Iowa, 206, 71 N. W. 233, 37 L. R. A. 462, 63 Am. St. Rep. 443; Ruhland v. Waterman, 29 R. I. 365, 71 Atl. 450. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

[12] Ogden City v. Boreman, 20 Utah, 98, 57 Pac. 843; Bank for Savings v. The Collector, 3 Wall. 495, 18 L. Ed. 207. *See "Statutes," Dec. Dig. (Key No.) §§ 204–211; Cent. Dig. §§ 282–288.*

GIVING EFFECT TO ENTIRE STATUTE

100. That construction of a statute is to be favored, and must be adopted if reasonably possible, which will give meaning to every word, clause, and sentence of the statute and operation and effect to every part and provision of it.

This rule is of universal application, and has been repeatedly recognized and stated by the courts.[18] It rests

[18] United States v. Ninety-Nine Diamonds, 139 Fed. 961, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185; Hawkins v. Louisville & N. R. Co., 145 Ala. 385, 40 South. 293; Chambers v. Solner, 1 Alaska, 271; City of Escondido v. Escondido Lumber, Hay & Grain Co., 8 Cal. App. 435, 97 Pac. 197; City of Denver v. Campbell, 33 Colo. 162, 80 Pac. 142; Goode v. State, 50 Fla. 45, 39 South. 461; People v. Busse, 240 Ill. 338, 88 N. E. 831; Jones v. Grieser, 238 Ill. 183, 87 N. E. 295; McReynolds v. People, 230 Ill. 623, 82 N. E. 945; Peterson v. People, 129 Ill. App. 55; Crozer v. People, 206 Ill. 464, 69 N. E. 489; Andel v. People, 106 Ill. App. 558; Stayton v. Hulings, 7 Ind. 144; Sutton v. Parker, 65 Ind. 536; Cleveland, C., C. & St. L. Ry. Co. v. Backus, 133 Ind. 513, 33 N. E. 421, 18 L. R. A. 729; State v. Weller, 171 Ind. 53, 85 N. E. 761; Coggeshall v. City of Des Moines, 138 Iowa, 730, 117 N. W. 309, 128 Am. St. Rep. 221; Noecker v. Noecker, 66 Kan. 347, 71 Pac. 815; Wenger v. Taylor, 39 Kan. 754, 18 Pac. 911; Johnson v. Equitable Life Assur. Soc. of United States, 137 Ky. 437, 125 S. W. 1074; State v. Callahan, 47 La. Ann. 444, 17 South. 50; State ex rel. Jury Com'rs v. City of New Orleans, 2 McGloin (La.) 46; Commonwealth v. McCaughey, 9 Gray (Mass.) 296; Browne v. Turner, 174 Mass. 150, 54 N. E. 510; Ryan v. City of Boston, 204 Mass. 456, 90 N. E. 581; Potter v. Safford, 50 Mich. 46, 14 N. W. 694; Detroit & M. Ry. Co. v. Alpena Circuit Judge, 152 Mich. 201, 115 N. W. 724; Robinson v. Harmon, 157 Mich. 266, 117 N. W. 661; Strottman v. St. Louis, I. M. & S. R. Co., 211 Mo. 227, 109 S. W. 769; Scott v. Royston, 223 Mo. 568, 123 S. W. 454; Riddick v. Walsh, 15 Mo. 519; State ex rel. and to Use of School Dist. of Sedalia v. Harter, 188 Mo. 516, 87 S. W. 941; State ex rel. Knight v. Cave, 20 Mont. 468, 52 Pac. 200; Daniels v. Andes Ins. Co., 2 Mont. 78; State ex rel. Saunders v. Fink, 74 Neb. 641, 104 N. W. 1059; Western Travelers' Acc. Ass'n v. Taylor, 62 Neb. 783, 87 N. W. 950; Freeman v. Freeman, 126 App. Div. 601, 110 N. Y. Supp. 686; Baxter v. York Realty Co., 128 App. Div. 79, 112 N. Y. Supp. 455; Wehrenberg v. New York, N. H. & H. R. Co., 124 App. Div. 205, 108 N. Y. Supp. 704; Nance v. Southern Ry. Co., 149 N. C. 366, 63 S. E

upon the presumption that the legislature cannot have intended to use words in vain or to leave part of its enactment without sense or meaning, or to introduce into the same statute clauses or provisions which would annul or mutually destroy each other; but, on the contrary, it must be presumed, as the purpose of the legislature, that the whole of the statute and every part of it should be significant and effective.[14] We must therefore endeavor to avoid such a construction as, while giving effect to part of the law, would lead to absurd consequences in respect to the rest.[15] If there are apparent conflicts or repugnancies between different parts or provisions of the statute, it must be considered as a whole, in the light of its general purpose and intention, and the court must endeavor to avoid such conflicts and reconcile such repugnancies, by adopting an interpretation which will harmonize all the provisions of the law, if this can be done reasonably and without too great

116; Fortune v. Board of Com'rs of Buncombe County, 140 N. C. 322, 52 S. E. 950; Trapp v. Wells Fargo Exp. Co., 22 Okl. 377, 97 Pac. 1003; Lee v. Roberts, 3 Okl. 106, 41 Pac. 595; Territory ex rel. Sampson v. Clark, 2 Okl. 82, 35 Pac. 882; State v. Johnson, 23 S. D. 293, 121 N. W. 785, 22 L. R. A. (N. S.) 1007; Hoffman v. Lewis, 31 Utah, 179, 87 Pac. 167; State v. Rutland R. Co., 81 Vt. 508, 71 Atl. 197; Willis v. Kalmbach, 109 Va. 475, 64 S. E. 342; Postal Tel. Cable Co. v. Farmville & P. R. Co., 96 Va. 661, 32 S. E. 468; Smith v. Bryan, 100 Va. 199, 40 S. E. 652; Hoover v. Saunders, 104 Va. 783, 52 S. E. 657; Baxter v. Wade, 39 W. Va. 281, 19 S. E. 404; Bank of Bramwell v. Mercer County Court, 36 W. Va. 341, 15 S. E. 78; Wellsburg & S. L. R. Co. v. Panhandle Traction Co., 56 W. Va. 18, 48 S. E. 746; State v. Columbian Nat. Life Ins. Co., 141 Wis. 557, 124 N. W. 502; Mutual Life Ins. Co. of New York v. Allen (Ala.) 51 South. 877; United States ex rel. Gribble v. Ballinger, 33 App. D. C. 211; Axtell v. Smedley & Rodgers Hardware Co., 59 Fla. 430, 52 South. 710; Gage County v. Wright, 86 Neb. 347, 125 N. W. 626; Ex parte Prosole (Nev.) 108 Pac. 630. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

[14] Hannon v. Southern Pac. R. Co., 12 Cal. App. 350, 107 Pac. 335; Postal Tel. Cable Co. v. Norfolk & W. R. Co., 88 Va. 920, 14 S. E. 803. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

[15] People v. Sholem, 238 Ill. 203, 87 N. E. 390; Bingham v. Birmingham, 103 Mo. 345, 15 S. W. 533; J. I. Case Threshing Mach. Co. v. Watson, 122 Tenn. 156, 122 S. W. 974. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

violence to the language of the act.[16] It is also bad interpretation (if it can be avoided in any fair and sensible way) to read a statute in such a manner that one of its provisions will neutralize another or render it nugatory or abortive;[17] and a construction which gives to a clause or part of a statute no function to perform, or makes it a mere unmeaning repetition of another clause, must be rejected as unsound, if any other fair or even plausible construction can be found, for it would impute folly or want of intelligence to the legislature.[18] For the same reason, no word, clause, or sentence should be construed as unmeaning or mere surplusage, if a construction can legitimately be found which will give force to and preserve all the words of the statute.[19]

In case of conflict, therefore, between two clauses of the statute, if one of them is plainly susceptible of but a single meaning, it will control the interpretation of the other, that being fairly susceptible of two meanings.[20] And if full effect cannot be given to every word of the statute, still it

[16] Ingle v. Batesville Grocery Co., 89 Ark. 378, 117 S. W. 241; Lehman v. State (Ind. App.) 88 N. E. 365; Burke v Burke, 34 Mich. 451; School Board of Borough of Brooklyn v. Board of Education of City of New York, 157 N. Y. 566, 52 N. E. 583; Trapp v. Wells-Fargo Express Co., 22 Okl. 377, 97 Pac. 1003; Hill v. State, 54 Tex. Cr. R. 646, 114 S. W. 117; Wellsburg & S. L. R. Co. v. Panhandle Traction Co., 56 W. Va. 18, 48 S. E. 746. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

[17] State v. Corning Sav. Bank, 139 Iowa, 338, 115 N. W. 937; Attorney General ex rel. Zacharias v. Board of Education of City of Detroit, 154 Mich. 584, 118 N. W. 606; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; State v. Burr, 16 N. D. 581, 113 N. W. 705; Bohart v. Anderson, 24 Okl. 82, 103 Pac. 742; Dutro v. Ladd, 50 Or. 120, 91 Pac. 459; Lawson v. Tripp, 34 Utah, 28, 95 Pac. 520; Miles v. Wells, 22 Utah, 55, 61 Pac. 534. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

[18] State v. Harden, 62 W. Va. 313, 58 S. E. 715. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

[19] State v. Fontenot, 112 La. 628, 36 South. 630; Ford v. State, 79 Neb. 309, 112 N. W. 606. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

[20] Dennis v. Moses, 18 Wash. 537, 52 Pac. 333, 40 L. R. A. 302. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

must be made effective as far as may be possible.[21] But a clearly expressed intention in one part of the statute will not yield to a doubtful construction of another portion of it.[22]

CONFLICTING CLAUSES AND PROVISIONS

101. If two statutes, or two parts or sections of the same statute, cover the same matter in whole or in part, and are not absolutely irreconcilable, it is the duty of the court, if possible, to give effect to both.

102. But if there is a conflict between two statutes relating to the same subject which cannot be reconciled by any fair and reasonable method of construction, the last in point of time will control; and if there is a similar conflict between two clauses or sections of the same statute, effect must be given to the last in order of position, overriding the earlier.

103. In case of a similar conflict between specific provisions relating to a particular subject and general provisions for the class to which that subject belongs, the special provisions control and the general must give way, or, in a proper case, the specific provision will be taken as creating an exception to the general rule.

Avoiding Conflict

An irreconcilable conflict between two statutes applicable to the same matter, or between different parts of the same statute, can only arise out of the use of language too plain and clear to be mistaken and definitely expressive of a positive intention of the legislature. If the language used in either or both places is fairly susceptible of more

[21] Old Dominion B. & L. Ass'n v. Sohn, 54 W. Va. 101, 46 S. E. 222. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

[22] Wellsburg & S. L. R. Co. v. Panhandle Traction Co., 56 W. Va. 18, 48 S. E. 746. *See "Statutes," Dec. Dig. (Key No.) § 206; Cent. Dig. § 283.*

than one meaning, or is shrouded in any ambiguity or uncertainty, so that interpretation may properly perform its function, it is the duty of the court, in the absence of any clearly expressed or indicated purpose to repeal, to seek for such a construction as will leave both statutes or parts of the statute operative and weave them into an harmonious and intelligent whole.[23]

Later Provision Annulling Earlier

On the general principle of implied repeal, if there is an inconsistency or repugnance between two statutes, both relating to the same subject-matter, which cannot be removed by any fair and reasonable method of interpretation, it is the latest expression of the legislative will which must prevail and override the earlier.[24] So, also, it is a general rule that where different parts or sections of the same statute are found to be in irreconcilable conflict, the latest in order of position or arrangement will prevail.[25]

But this is not to be taken as an absolutely invariable and inflexible rule. It is subject to exceptions, founded on

[23] Frost v. Wenle, 157 U. S. 46, 15 Sup. Ct. 532, 39 L. Ed. 614; Commonwealth v. Ward, 136 Ky. 146, 123 S. W. 673; State v. Courtney, 27 Mont. 378, 71 Pac. 308; Reusch v. City of Lincoln, 78 Neb. 828, 112 N. W. 377; Lingonner v. Ambler, 44 Neb. 316, 62 N. W. 486; State v. Burr, 16 N. D. 581, 113 N. W. 705; State ex rel. Attorney General v. Mulhern, 74 Ohio St. 363, 78 N. E. 507; State v. Stanley, 82 Vt. 37, 71 Atl. 817. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 223–225¾; Cent. Dig. §§ 284, 300–306.*

[24] Pease v. Whitney, 5 Mass. 380; City of Cincinnati v. Holmes, 56 Ohio St. 104, 46 N. E. 514; Jones v. Broadway Roller Rink Co., 136 Wis. 595, 118 N. W. 170, 19 L. R. A. (N. S.) 907; State v. Miskimmons, 2 Ind. 440; Commissioners of Highways v. Dehoe, 43 Ill. App. 25; Branagan v. Dulaney, 8 Colo. 408, 8 Pac. 669; Branham v. Long, 78 Va. 352. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 223–225¾; Cent. Dig. §§ 284, 300–306.*

[25] United States v. Jackson, 143 Fed. 783, 75 C. C. A. 41; Joseph Speidel Grocery Co. v. Warder, 56 W. Va. 602, 49 S. E. 534; Ex parte Hewlett, 22 Nev. 333, 40 Pac. 96; Peterson v. People, 129 Ill. App. 55; Albertson v. State, 9 Neb. 429, 2 N. W. 742; Ryan v. State ex rel. Eller, 5 Neb. 276; Quick v. White Water Tp., 7 Ind. 570. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 223–225¾; Cent. Dig. §§ 284, 300–306.*

good sense and the recognized rules of construction.[26] Thus, if the first of two conflicting clauses is clear and explicit and the latter incoherent, the former, notwithstanding its position, will prevail over the latter; or, as otherwise stated, it is only when the subsequent clause combines equal clearness with the advantage of position that it will control the former.[27] And again, where the later clause or section is plainly inconsistent with the earlier clause or section, but such earlier clause or section conforms to the obvious policy and intent of the legislature, the last clause, if operative at all, must be so construed as to give it an effect consistent with the first portion of the statute and the policy indicated thereby.[28] So, also, it is ruled that a special provision in one section of a statute will not be treated as having been altered or annulled by a subsequent section.[29] And the rule under consideration does not apply to a proviso or saving clause which is inconsistent with or repugnant to the purview of the act; irrespective of its position, it must give way to the body of the statute.[30]

[26] State ex rel. Attorney General v. Mulhern, 74 Ohio St. 363, 78 N. E. 507. *See "Statutes," Dec. Dig.* (*Key No.*) §§ *207, 223–225¾; Cent. Dig.* §§ *284, 300–306.*

[27] State ex rel. Wilson v. Williams, 8 Ind. 191. In California it is provided (Pol. Code Cal. § 4484) that if conflicting provisions are found in different sections of the same chapter or article of the Code, the provisions of the sections last in numerical order must prevail; but it is held that this has no application where the sections were passed at different times. People v. Dobbins, 73 Cal. 257, 14 Pac. 860. *See "Statutes," Dec. Dig.* (*Key No.*) §§ *207, 223–225¾; Cent. Dig.* §§ *284, 300–306.*

[28] Sams v. King, 18 Fla. 557; Hall v. State, 39 Fla. 637, 23 South. 119; State ex rel. Patterson v. Bates, 96 Minn. 110, 104 N. W. 709, 113 Am. St. Rep. 612. *See "Statutes," Dec. Dig.* (*Key No.*) §§ *207, 223–225¾; Cent. Dig.* §§ *284, 300–306.*

[29] Rodgers v. United States, 36 Ct. Cl. 266, affirmed 185 U. S. 83, 22 Sup. Ct. 582, 46 L. Ed. 816. *See "Statutes," Dec. Dig.* (*Key No.*) §§ *207, 223–225¾; Cent. Dig.* §§ *284, 300–306.*

[30] Shutt v. State, 173 Ind. 689, 89 N. E. 6; Gist v. Rackliffe-Gibson Const. Co., 224 Mo. 369, 123 S. W. 921; Penick v. High Shoals Mfg. Co., 113 Ga. 592, 38 S. E. 973. And see infra, p. 439. *See "Statutes," Dec. Dig.* (*Key No.*) § *207; Cent. Dig.* § *284.*

Conflicting General and Special Provisions

Where a statute contains both a general enactment and also specific or particular provisions, the effort must be, in the first instance, to harmonize all the provisions of the statute by construing all the parts together; and it is only when, on such a construction, the repugnancy of the specific provisions to the general language is plainly manifested, that the intent of the legislature as declared in the general enacting part is made to give way.[31] But if such a comparison of the various parts of the act discloses an irreconcilable conflict, it is the special and specific provisions which must control and the general provisions which must yield,[32] and this is irrespective of their relative dates or relative position in the statute.[33] This principle is expressed in the maxim "generalia specialibus non derogant."

A substantially similar rule prevails in cases where the two conflicting provisions are found in different statutes relating to the same subject. It is an established rule in the construction of statutes that a subsequent act, treating a subject in general terms, and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.[34] Hence, where there are two acts or provisions,

[31] State v. Com'rs of Railroad Taxation, 37 N. J. Law, 228; State ex rel. Jones v. Burke, 140 Wis. 524, 123 N. W. 110. *See "Statutes," Dec. Dig. (Key No.) § 207; Cent. Dig. § 284.*

[32] United States v. Jackson, 143 Fed. 783, 75 C. C. A. 41; Martin v. Board of Election Com'rs, 126 Cal. 404, 58 Pac. 932; Miller v. Engle, 3 Cal. App. 325, 85 Pac. 159; McKean v. Gauthier, 132 Ill. App. 376; State ex rel. Prout v. Nolan, 71 Neb. 136, 98 N. W. 657; Carpenter v. Russell, 13 Okl. 277, 73 Pac. 930; City of Austin v. Cahill, 99 Tex. 172, 88 S. W. 542; Callaghan v. McGown (Tex. Civ. App.) 90 S. W. 319; Shock v. Colorado County (Tex. Civ. App.) 115 S. W. 61; Jones v. Broadway Roller Rink Co., 136 Wis. 595, 118 N. W. 170, 19 L. R. A. (N. S.) 907. *See "Statutes," Dec. Dig. (Key No.) § 207; Cent. Dig. § 284.*

[33] Lawyer v. Carpenter, 80 Ark. 411, 97 S. W. 662. *See "Statutes," Dec. Dig. (Key No.) § 207; Cent. Dig. § 284.*

[34] Fosdick v. Perrysburg, 14 Ohio St. 472; Gage v. Currier, 4

one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter, and thus conflict with the special act or provision, the special act must be taken as intended to constitute an exception to the general act, as the legislature is not presumed to have intended a conflict.[35] Thus, when the provisions of a general law, applicable to the entire state, are repugnant to the provisions of a previously enacted special law, applicable in a particular locality only, the passage of such general law does not operate to modify or repeal the special law, either wholly or in part, unless such modification or repeal is provided for in express words, or arises by necessary implication.[36] "A local statute, enacted for a particular municipality, for reasons satisfactory to the legislature, is intended to be exceptional and for the benefit of such municipality. It has been said that it is against reason to suppose that the legislature, in framing a general system for the state, intended to repeal a special act which the local circumstances made necessary." [37] So, again, a special act

Pick. (Mass.) 399; Maysville Turnpike Co. v. How, 14 B. Mon. (Ky.) 426; Waldo v. Bell, 13 La. Ann. 329; State ex rel. Kellogg v. Bishop, 41 Mo. 16; Brown v. County Com'rs, 21 Pa. 37; Gregory's Case, 6 Coke, 19b. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 300–306.*

[35] Rodgers v. United States., 36 Ct. Cl. 266; City of Birmingham v. Southern Express Co., 164 Ala. 529, 51 South. 159; State ex rel. Loftin v. McMillan, 55 Fla. 254, 45 South. 882; Crane v. Reeder, 22 Mich. 322; Gilkeson v. Missouri Pac. R. Co., 222 Mo. 173, 121 S. W. 138, 24 L. R. A. (N. S.) 844; Kountze v. Omaha, 63 Neb. 52, 88 N. W. 117; Gabel v. Williams, 39 Misc. Rep. 489, 80 N. Y. Supp. 489; Atchison, T. & S. F. Ry. Co. v. Haynes, 8 Okl. 576, 58 Pac. 738; Kolb v. Reformed Episcopal Church of the Reconciliation, 18 Pa. Super. Ct. 477; State v. Mudie, 22 S. D. 41, 115 N. W. 107; Hawkins v. Bare & Carter, 63 W. Va. 431, 60 S. E. 391; Jackson v. Chicago, R. I. & P. R. Co., 178 Fed. 432, 102 C. C. A. 159; Jersey City v. Hall (N. J.) 76 Atl. 1058. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[36] State v. Mills, 34 N. J. Law, 177. *See "Statutes," Dec. Dig. (Key No.) §§ 162, 225½; Cent. Dig. §§ 235–237, 305.*

[37] Malloy v. Commonwealth, 115 Pa. 25, 7 Atl. 790, citing Brown v. County Com'rs, 21 Pa. 37. And see Wood v. Board of Election

exempting certain property from taxation is not to be considered as impliedly repealed by a subsequent general statute imposing taxes generally, although the language of the later act is broad enough to cover the property exempted by the previous law.[38] Where an act incorporating a turnpike company required the rates of tolls to be written on signboards in "large or capital letters," and a general act was afterwards passed, requiring the rates of toll on turnpike roads to be written in capital letters, it was held that the private act was not suspended or repealed by the general act.[39] Even where two statutes are passed upon the same day, one of which relates to a particular class of cases, and the other is of a more general character, their provisions being repugnant, it is the former which must prevail as to the particular class of cases therein referred to.[40]

But "there is no rule of law which prohibits the repeal of a special act by a general one, nor is there any principle forbidding such repeal without the use of express words declarative of the legislative intent to repeal the earlier statute. The question is always one of intention, and the purpose to abrogate the particular enactment by a later general enactment is sufficiently manifested when the provisions of both cannot stand together, and it is a cardinal doctrine in the construction of statutes that, if possible, full effect shall be given to all their parts." [41] Hence a general statute will repeal prior special or local acts, without expressly naming them, where they are inconsistent with it, and where it can be seen from the whole enactment that

Com'rs, 58 Cal. 561; Burke v. Jeffries, 20 Iowa, 145. *See "Statutes," Dec. Dig. (Key No.) §§ 162, 225½; Cent. Dig. §§ 235–237, 305.*

[38] Williams v. Pritchard, 4 Durn. & E. 2; Blain v. Bailey, 25 Ind. 105. *See "Statutes," Dec. Dig. (Key No.) §§ 162, 225½; Cent. Dig. §§ 235–237, 305.*

[39] Nichols v. Bertram, 3 Pick. (Mass.) 342. *See "Statutes," Dec. Dig. (Key No.) §§ 162, 225½; Cent. Dig. §§ 235–237, 305.*

[40] Mead v. Bagnall, 15 Wis. 156; St. Martin v. City of New Orleans, 14 La. Ann. 113. *See "Statutes," Dec. Dig. (Key No.) §§ 161, 225¼; Cent. Dig. §§ 230–234, 304.*

[41] State v. Williamson, 44 N. J. Law, 165. *See "Statutes," Dec. Dig. (Key No.) §§ 162, 225½; Cent. Dig. §§ 235–237, 305.*

it was the intention of the legislature to sweep away all local peculiarities, though sanctioned by special acts, and to establish one uniform system.[42] For instance, where a clause in the charter of a private corporation is entirely inconsistent with a clause in a subsequent general statute relating to the same matter, it is repealed thereby.[43]

STATUTES IN PARI MATERIA

104. Statutes in pari materia are to be construed together; each legislative act is to be interpreted with reference to other acts relating to the same matter or subject.[44]

[42] Bramston v. Mayor of Colchester, 6 El. & Bl. 246. And see State v. Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979. *See "Statutes," Dec. Dig. (Key No.) §§ 162, 225½; Cent. Dig. §§ 235–237, 305.*

[43] Great Central Gas Consumers' Co. v. Clarke, 13 C. B. (N. S.) 838; Board of Water Com'rs v. Conkling, 113 Ill. 340. *See "Statutes," Dec. Dig. (Key No.) §§ 162, 225½; Cent. Dig. §§ 235–237, 305.*

[44] United States v. Freeman, 3 How. 556, 11 L. Ed. 724; Vane v. Newcombe, 132 U. S. 220, 10 Sup. Ct. 60, 33 L. Ed. 310; Austin v. United States, 155 U. S. 417, 15 Sup. Ct. 167, 39 L. Ed. 206; Board of Com'rs of Seward County, Kan., v. Ætna Life Ins. Co., 90 Fed. 222, 32 C. C. A. 585; United States v. Trans-Missouri Freight Ass'n, 58 Fed. 58, 7 C. C. A. 15, 24 L. R. A. 73; Le Roy v. Chabolla, 2 Abb. U. S. 448, Fed. Cas. No. 8,267; The Harriet, 1 Story, 251, Fed. Cas. No. 6,099; City of Birmingham v. Southern Express Co., 164 Ala. 529, 51 South. 159; Brace v. Solner, 1 Alaska, 361; Benton v. Willis, 76 Ark. 433, 88 S. W. 1000; Kollenberger v. People, 9 Colo. 233, 11 Pac. 101; United Society v. President, etc., of Eagle Bank of New Haven, 7 Conn. 457; Grant v. Cooke, 7 D. C. 165; Curry v. Lehman, 55 Fla. 847, 47 South. 18; Struthers v. People, 116 Ill. App. 481; People ex rel. Conlon v. Mount, 87 Ill. App. 194; State v. Gerhardt, 145 Ind. 439, 44 N. E. 469, 33 L. R. A. 313; Snyder v. Thieme & Wagner Brewing Co., 173 Ind. 659, 90 N. E. 314; Hester v. Town of Greenwood, 172 Ind. 279, 88 N. E. 498; Gorley v. Sewell, 77 Ind. 316; Elliott v. Brazil Block Coal Co., 25 Ind. App. 592, 58 N. E. 736; Hutchens v. Covert, 39 Ind. App. 382, 78 N. E. 1061; Eckerson v. City of Des Moines, 137 Iowa, 452, 115 N. W. 177; In re Hall, 38 Kan. 670, 17 Pac. 649; City of Marion Center v. Toomy, 21 Kan. 439; State v. Young, 17 Kan. 414; Blood v. Northrup, 1 Kan. 28; Commonwealth v. Herald Pub. Co., 32 Ky. Law Rep. 1293, 108 S. W. 892; Board of Council of Danville v. Fiscal Board of Boyle

The reasons which support this rule are twofold. In the first place, all the enactments of the same legislature on the same general subject-matter are to be regarded as parts of one uniform system. Later statutes are considered as supplementary or complementary to the earlier enactments.

County, 106 Ky. 608, 51 S. W. 157; Hurley v. Inhabitants of South Thomaston, 105 Me. 301, 74 Atl. 734; Stuart v. Chapman, 104 Me. 17, 70 Atl. 1069; Taylor v. Inhabitants of Town of Caribou, 102 Me. 401, 67 Atl. 2; Billingslea v. Baldwin, 23 Md. 85; Church v. Crocker, 3 Mass. 17; Green v. Commonwealth, 12 Allen (Mass.) 155; Brooks v. Fitchburg & L. St. Ry. Co., 200 Mass. 8, 86 N. E. 289; Simpkins v. Ward, 45 Mich. 559, 8 N. W. 507; Reithmiller v. People, 44 Mich. 280, 6 N. W. 667; Sales v. Barber Asphalt Pav. Co., 166 Mo. 671, 66 S. W. 979; Rutter v. Carothers, 223 Mo. 631, 122 S. W. 1056; Glaser v. Rothschild, 221 Mo. 180, 120 S. W. 1, 22 L. R. A. (N. S.) 1045; E. R. Darlington Lumber Co. v. Missouri Pac. Ry. Co., 216 Mo. 658, 116 S. W. 530; Grimes v. Reynolds, 184 Mo. 679, 83 S. W. 1132; City of Springfield v. Starke, 93 Mo. App. 70; Dawson County v. Clark, 58 Neb. 756, 79 N. W. 822; Chicago, R. I. & P. Ry. Co. v. Zernecke, 59 Neb. 689, 82 N. W. 26, 55 L. R. A. 610; State ex rel. Bishop v. Dunn, 76 Neb. 155, 107 N. W. 236; State ex rel. Love v. Cosgrave, 85 Neb. 187, 122 N. W. 885, 26 L. R. A. (N. S.) 207; State v. Babcock, 21 Neb. 599, 33 N. W. 247; Hendrix v. Rieman, 6 Neb. 516; Cocheu v. Methodist Protestant Church, 32 App. Div. 239, 52 N. Y. Supp. 1019; People v. New York Cent. Ry. Co., 25 Barb. (N. Y.) 201; People ex rel. Duncan v. Clement, 134 App. Div. 462, 119 N. Y. Supp. 374; Ebling Brewing Co. v. Nimphius, 58 Misc. Rep. 545, 109 N. Y. Supp. 808; Bull v. New York City R. Co., 192 N. Y. 361, 85 N. E. 385, 19 L. R. A. (N. S.) 778; Nance v. Southern Ry. Co., 149 N. C. 366, 63 S. E. 116; Wishek v. Becker, 10 N. D. 63, 84 N. W. 590; Manuel v. Manuel, 13 Ohio St. 458; Whitmire v. Muncy Creek Tp., 17 Pa. Super. Ct. 399; State v. Central Vermont Ry. Co., 81 Vt. 463, 71 Atl. 194, 130 Am. St. Rep. 1065; Mitchell v. Witt, 98 Va. 459, 36 S. E. 528; Wellsburg & S. L. R. Co. v. Panhandle Traction Co., 56 W. Va. 18, 48 S. E. 746; Burton v. Union Pac. Coal Co. (Wyo.) 107 Pac. 391; Earl of Ailesbury v. Pattison, 1 Dougl. 28; City of Martinsville v. Washington Civil Tp., Morgan County (Ind. App.) 92 N. E. 191; Robert v. Chicago & A. R. Co., 148 Mo. App. 96, 127 S. W. 925; Home Telephone Co. v. Granby & Neosho Telephone Co., 147 Mo. App. 216, 126 S. W. 773; State ex rel. Hughes v. Reuswig, 110 Minn. 475, 126 N. W. 279; State ex rel. Bullard v. Searle, 86 Neb. 259, 125 N. W. 590; People ex rel. Fifth Ave. Bldg. Co. v. Williams, 198 N. Y. 238, 91 N. E. 638; Bernard v. Benson, 58 Wash. 191, 108 Pac. 439; Board of Com'rs of Big Horn County v. Woods (Wyo.) 107 Pac. 753. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

In the course of the entire legislative dealing with the subject we are to discover the progressive development of a uniform and consistent design, or else the continued modification and adaptation of the original design to apply it to changing conditions or circumstances. In the passage of each act, the legislative body must be supposed to have had in mind and in contemplation the existing legislation on the same subject, and to have shaped its new enactment with reference thereto. Hence the same principle which requires us to study the context for the meaning of a particular phrase or provision, and which directs us to compare all the several parts of the same statute, only takes on a broader scope when it bids us read together, and with reference to each other, all statutes in pari materia. Whatever is ambiguous or obscure in a given statute will be best explained by a consideration of analogous provisions in other acts relating to the same subject, or by a study of the general policy which pervades the whole system of legislation.[45] Secondly, the rule derives support from the principle which requires that the interpretation of a statute shall be such, if possible, as to avoid any repugnancy or inconsistency between different enactments of the same legislature. To achieve this result, it is necessary to consider all previous acts relating to the same matters, and to construe the act in hand so as to avoid, as far as it may be possible, any conflict between them. Hence, for example, when the legislature has used a word in a statute in one

[45] As a general rule, it is not to be expected that a statute which has a place in a general system of laws will be so perfect as to need no support from the rules and provisions of the system of which it forms a part; and hence, when a new statute is intended to become a part of such a general system, its construction or interpretation will generally receive support from a consideration of the other enactments constituting a part of the system. Conn v. Board of Com'rs of Cass County, 151 Ind. 517, 51 N. E. 1062. The public policy of a state in regard to particular matters is to be deduced from the general course of its legislation relating thereto, and for this reason prior enactments on the same general subject are to be studied in connection with each new law. People v. Howard, 50 Mich. 239, 15 N. W. 101. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

sense and with one meaning, and subsequently uses the same word in legislating on the same subject-matter, it will be understood as using the word in the same sense, unless there is something in the context or in the nature of things to indicate that it intended a different meaning thereby.[46]

We are next to inquire when different statutes are to be considered as in pari materia, within the meaning of this rule. According to the Supreme Court of Connecticut, statutes are in pari materia which relate to the same person or thing, or to the same class of persons or things.[47] "The word 'par' must not be confounded with the term 'similis.' It is used in opposition to it, as in the expression 'magis pares sunt quam similes,' intimating not likeness merely but identity. It is a phrase applicable to public statutes or general laws, made at different times, and in reference to the same subject. Thus, the English laws concerning paupers and their bankrupt acts are construed together, as if they were one statute and as forming a united system, oth-

[46] In re County Seat of Linn County, 15 Kan. 500. See, also, Robbins v. Omnibus R. Co., 32 Cal. 472; Oneida County v. Tibbits, 125 Wis. 9, 102 N. W. 897; Daniel v. Simms, 49 W. Va. 554, 39 S. E. 690; Sheehan v. Louisville & N. R. Co., 31 Ky. Law Rep. 113, 101 S. W. 380. Where it is conceded that a word used in a statute renders the provision in which it occurs entirely without meaning, and therefore must be a misprint or a clerical error, the court, in searching for the word which was intended to be used and which should be substituted for it, will have recourse to statutes in pari materia, and the fact that a certain other word was used eight separate times by five different legislatures in kindred acts, and acts of which the one in question is amendatory, must be accorded material influence on the question of substituting it for the word misprinted. Smith v. Board of Com'rs of Hamilton County, 173 Ind. 364, 90 N. E. 881. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[47] United Society v. President, etc., of Eagle Bank of New Haven, 7 Conn. 456. And see Mullally v. Mayor, etc., City of New York, 3 Hun (N. Y.) 661; De Graffenreid v. Iowa Land & Trust Co., 20 Okl. 687, 95 Pac. 624; People v. Aichinson, 7 How. Prac. (N. Y.) 241; Waterford & Whitehall Turnpike v. People, 9 Barb. (N. Y.) 161; Town of Highgate v. State, 59 Vt. 39, 7 Atl. 898; State v. Gerhardt, 145 Ind. 439, 44 N. E. 469, 33 L. R. A. 313. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

erwise the system might, and probably would, be unharmonious and inconsistent. Such laws are in pari materia." [48] To illustrate further, all the statutes of the same state relating to the property rights and contracts of married women, removing their common-law disabilities, authorizing them to manage their separate estates, to engage in business, etc., are to be read and construed together as constituting one system. Though they may have been passed at different times, successively advancing to a standard the opposite of that of the common law, they are all strictly in pari materia, and any doubt or ambiguity in one should be cleared up by reference to the terms, the purpose, and the policy of the rest.[49] Again, an act authorizing married women to dispose of their property by will is in pari materia with the general statute relating to the execution and proof of wills.[50] A statute in relation to attachments against steamboats for debt is in pari materia with the general attachment law of the state, and hence, in so far as the special law is silent as to the modes of proceeding in the execution and return of writs issued under it, they must be regulated by the general rules prescribed by the general law.[51] Again, it is said that the rule of construction by the aid of statutes in pari materia is especially applicable in the case of revenue laws, which though made up of independent enactments, are regarded as one system, in which the construction of any separate act may be aided by the examination of other provisions which compose the system.[52] And the same rule is applicable to the provisions in appropria-

[48] United Society v. President, etc., of Eagle Bank of New Haven, 7 Conn. 456. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[49] Perkins v. Perkins, 62 Barb. (N. Y.) 531. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[50] Linton's Appeal, 104 Pa. 228. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[51] Wallace v. Seales, 36 Miss. 53. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[52] United States v. Collier, 3 Blatchf. 325, Fed. Cas. No. 14,833. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

tion acts.[53] An act providing for a homestead and exemption for families of minor children is in pari materia with the laws allowing dower to the widow and minor children of a decedent, and is to be construed in harmony therewith.[54] So also, all the laws of the state, whenever passed, relating to the subject of the regulation of the liquor traffic, are in pari materia.[55] In a case in Massachusetts, it appeared that a statute prohibited discrimination against negroes in any licensed inn or in any public place of amusement. A later act prohibited the exclusion of such persons from any public place of amusement "licensed under the laws" of the state. It was considered that the two acts were in pari materia, and should be read together, and that the second act showed that the public places of amusement referred to in the first were such as were licensed.[56] Again, two statutes requiring certain sums to be paid into the state treasury by a city gave a certain court jurisdiction to enforce the payment. A third act required an additional payment, and thereby increased the aggregate, but was silent as to the mode of enforcement. It was held that the three acts should be construed together, and that the remedy given by the two former was applicable under the last.[57] So, also, an act providing for convict labor on the state capitol grounds and one for leasing the penitentiary are in pari materia.[58] And a statute relating to the segregation and confinement of dipsomaniacs is in pari materia with other laws providing for the detention, care, and discharge

[53] Converse v. United States, 21 How. 463, 16 L. Ed. 192. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[54] Roff v. Johnson, 40 Ga. 555. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[55] Ferguson v. Board of Sup'rs of Monroe County, 71 Miss. 524, 14 South. 81; In re Hastings Brewing Co., 83 Neb. 111, 119 N. W. 27. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[56] Commonwealth v. Sylvester, 13 Allen, 247. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[57] City of Louisville v. Commonwealth, 9 Dana (Ky.), 70. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[58] State ex rel. Perry v. Clark, 54 Mo. 216. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

of insane patients.[59] Again, a law giving a right of action to the personal representatives of one killed by the wrongful act of another is in pari materia with a statute which regulates the liability of private corporations for personal injuries to their employés.[60] So, also, laws regulating the issue and registry of warrants, and laws providing for the issue and sale of bonds for the purpose of creating a fund out of which such warrants may be paid, are in pari materia.[61] And to aid in the construction of a statute as to when a bond recorder in a city should account, the court may look to all other statutes relating to public officers receiving public revenue for which they are required to account.[62]

But laws which relate to entirely different subjects are not in pari materia;[63] and an act is not in pari materia with another, although it may incidentally refer to the same subject, if its scope and aim are distinct and not connected with the former statute.[64] Thus a statute designed to prevent accidents and injury from the reckless driving of vehicles of all sorts is not in pari materia with an act regulating the rates of toll on a local turnpike; and hence the fact that the former statute was held applicable to a bicycle is no reason why the latter act should be held so applicable.[65] And, again, a statute relating to the confinement of cattle, so as to prevent their straying on the premises of others, is

[59] Ex parte Schwarting, 76 Neb. 773, 108 N. W. 125. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[60] Wabash R. Co. v. Fox, 64 Ohio St. 133, 59 N. E. 888, 83 Am. St. Rep. 739. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[61] Diggs v. Lobsitz, 4 Okl. 232, 43 Pac. 1069. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[62] Commonwealth for Use of City of Louisville v. Ross, 135 Ky. 315, 122 S. W. 161. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[63] State v. Wirt County Court, 63 W. Va. 230, 59 S. E. 884, 981. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[64] Wheelock v. Myers, 64 Kan. 47, 67 Pac. 632. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[65] Williams v. Ellis, L. R. 5 Q. B. Div. 175. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

not in pari materia with a statute which prescribes the rule of diligence to be observed by railway companies in the running of their trains and defines their liabilities in cases where stock is killed; such acts relate to distinct subjects, and the one should not be interpreted by the other.[66]

It has been frequently stated that this rule of construction has a special and peculiar applicability to different legislative enactments passed at the same session and relating to the same general subject. Such acts are to be considered and construed together, as if they were different sections of the same act and as if enacted at the same time, the presumption being that laws so enacted are all imbued with the same spirit and actuated by the same policy.[67] But, of course, this does not mean that the courts are to be restricted to the consideration of other legislation enacted at the same session.[68] On the contrary, they are at liberty, and it is their duty, to settle the interpretation of an ambiguous statute by referring to all laws which relate to the same subject-matter, without regard to their relative dates, and no matter whether they were enacted by the same legislature or at widely different times.[69] Nor is the search

[66] Central R. R. v. Hamilton, 71 Ga. 461. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[67] People ex rel. Frick v. Jackson, 30 Cal. 427; Curry v. Lehman, 55 Fla. 847, 47 South. 18; Devous v. Gallatin County, 244 Ill. 40, 91 N. E. 102; Chandler v. Lee, 1 Idaho, 349; Blackwell v. First Nat. Bank, 10 N. M. 555, 63 Pac. 43; Trapp v. Wells Fargo Express Co., 22 Okl. 377, 97 Pac. 1003; Hess v. Trigg, 8 Okl. 286, 57 Pac. 159; McGrady v. Terrell, 98 Tex. 427, 84 S. W. 641; Garrison v. Richards (Tex. Civ. App.) 107 S. W. 861. *See "Statutes," Dec. Dig. (Key No.) §§ 225, 225¼; Cent. Dig. §§ 302–304.*

[68] Indianapolis Northern Traction Co. v. Ramer, 37 Ind. App. 264, 76 N. E. 808. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 300–306.*

[69] Cahill v. State, 36 Ind. App. 507, 76 N. E. 182; State v. Gerhardt, 145 Ind. 439, 44 N. E. 469, 33 L. R. A. 313; State ex rel. Wagner v. Patterson, 207 Mo. 129, 105 S. W. 1048; In re Hastings Brewing Co., 83 Neb. 111, 119 N. W. 27; Commonwealth v. International Harvester Co., 131 Ky. 551, 115 S. W. 703; In re Kreiner, 156 Mich. 296, 120 N. W. 785; Cunningham v. Klamath Lake R. Co., 54 Or. 13, 101 Pac. 1099. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

limited to kindred statutes prior in time to the act under consideration; subsequent enactments in pari materia may also be studied for this purpose.[70]

Neither is it necessary, in order that one statute should be considered as in pari materia with another, so as to lend its aid on a question of interpretation, that the latter act should refer to the former; it is enough if they both relate to the same subject, as the legislature must be presumed to have had the earlier statute in mind, without expressly referring to it.[71] But where one statute refers to another for the power given by the former, the statute referred to is to be considered as incorporated in the one making the reference.[72]

Nor is it necessary that the earlier act should still continue in force. Although it may have expired by its own limitation, or though it may have been expressly or impliedly repealed, still it is to be considered and read as explanatory of the later enactment.[73] Thus, for example, one

[70] Chase v. Lord, 77 N. Y. 1; Smith v. People, 47 N. Y. 330; United States v. Freeman, 3 How. 556, 11 L. Ed. 724; Board of Com'rs of Jackson County v. Branaman, 169 Ind. 80, 82 N. E. 65; Campbell v. Youngson, 80 Neb. 322, 114 N. W. 415. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[71] State ex rel. Loftin v. McMillan, 55 Fla. 246, 254, 45 South. 882; Indianapolis Northern Traction Co. v. Ramer, 37 Ind. App. 264, 76 N. E. 808; Mitchell v. Witt, 98 Va. 459, 36 S. E. 528; De Graffenreid v. Iowa Land & Trust Co., 20 Okl. 687, 95 Pac. 624. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[72] Nunes v. Wellisch, 12 Bush (Ky.), 363; Turney v. Wilton, 36 Ill. 385. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[73] King v. Loxdale, 1 Burr. 445; Medbury v. Watson, 6 Metc. (Mass.) 246, 39 Am. Dec. 726; Church v. Crocker, 3 Mass. 17; Daniels v. Commonwealth, 7 Pa. 371; Forqueran v. Donnally, 7 W. Va. 114; Southern Ry. Co. v. McNeill (C. C.) 155 Fed. 756; Steck v. Prentice, 43 Colo. 17, 95 Pac. 552; Daniel v. Simms, 49 W. Va. 554, 39 S. E. 690; Wellsburg & S. L. R. Co. v. Panhandle Traction Co., 56 W. Va. 18, 48 S. E. 746; Commonwealth v. Bralley, 3 Gray (Mass.) 456. But see Lockwood v. District of Columbia, 24 App. D. C. 569, holding that, where a personal tax law imposes a tax on a certain occupation, without defining it, it is doubtful whether the court, in construing it, can look to old and repealed tax laws, which define

section of an act of Congress defined the term "Indian country." It was not re-enacted in the Revised Statutes of the United States, and therefore, by section 5596 thereof, was repealed. Yet it was held, that it may be referred to for the purpose of ascertaining the meaning of the phrase as found in other sections of the Revised Statutes, which were re-enactments of other parts of the original act.[74] Although a proviso to a statute is unconstitutional, and must therefore be rejected and denied any effectual operation, yet it cannot be disregarded in putting an interpretation upon the remaining portion of the act.[75]

It is also held that legislation which is of a similar nature to the statute under consideration, although not precisely in pari materia, is within the reason of the rule, and may be referred to for the same purpose, especially if contemporaneous, or nearly so.[76] Thus, in construing a revised penal code, the court may look to the provisions of a revised civil code, adopted by the same legislature and relating to the same subject.[77] So it will be presumed that a state statute was intended to have the same meaning as an act of Congress which it was enacted to effectuate.[78] But amendments to a bill, offered during its passage, but which were

such occupation, to ascertain the legislative meaning. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[74] Ex parte Crow Dog, 109 U. S. 556, 3 Sup. Ct. 396, 27 L. Ed. 1030; United States v. Le Bris, 121 U. S. 278, 7 Sup. Ct. 894, 30 L. Ed. 946. See, also, Attorney General v. Lamplough L. R. 3 Ex. Div. 214. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[75] Commonwealth ex rel. Attorney General v. Potts, 79 Pa. 164. *See "Statutes," Dec. Dig. (Key No.) §§ 204, 211, 223; Cent. Dig. §§ 282–288, 310.*

[76] Chase v. Lord, 77 N. Y. 1; State v. Summers, 142 Mo. 586, 44 S. W. 797; Moss v. United States, 29 App. D. C. 188. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 300–306.*

[77] Braun v. State, 40 Tex. Cr. R. 236, 49 S. W. 620. *See "Statutes," Dec. Dig. (Key No.) §§ 225, 225¼; Cent. Dig. §§ 302–304.*

[78] Wilson v. Bradley, 105 Ky. 52, 48 S. W. 1088. *See "Statutes," Dec. Dig. (Key No.) §§ 224, 225; Cent. Dig. §§ 300, 302, 304, 306.*

not finally incorporated in the statute as passed, cannot be considered in interpreting the statute.[79]

But, although the statute under consideration may be one of a series or group, it may still be that the legislature designs to depart from the general purpose or policy of its previous enactments on the general subject; and if such a design is unmistakably apparent on the face of the act, it must be given effect. It would be entirely erroneous, in such a case, to defeat the will of the legislature by undertaking to reconcile the act with prior statutes or to control its terms by theirs. Hence this rule of construction is to be resorted to only in cases of doubt or ambiguity, or where the words, in their ordinary and prima facie signification, would raise an undesigned conflict with previous laws. It is not applicable when the statute is plain and unambiguous and needs no such aid to reconcile it with the existing body of laws. In such cases, there is no occasion to resort to any extrinsic circumstances to determine the meaning of the statute, nor is it justifiable to do so. The legislature must be understood to have expressed its meaning in the words employed. It would be a perversion of the rule to apply it for the purpose of defeating the plainly expressed will of the legislative body.[80] And although statutes relating to the same subject are to be construed together, this rule does not go to the extent of controlling the language of subsequent statutes by any supposed policy of previous ones.[81]

[79] Lane v. Kolb, 92 Ala. 636, 9 South. 873. *See "Statutes," Dec. Dig. (Key No.) §§ 224, 230; Cent. Dig. §§ 300, 306, 311.*

[80] State ex rel. Haswell v. Cram, 16 Wis. 343; Chase v. Lord, 77 N. Y. 1; Ex parte Blaiberg, L. R. 23 Ch. Div. 254; Ingalls v. Cole, 47 Me. 530; Hamilton v. Rathbone, 175 U. S. 414, 20 Sup. Ct. 155, 44 L. Ed. 219; Rosencrans v. United States, 165 U. S. 257, 17 Sup. Ct. 302, 41 L. Ed. 708; United States v. Colorado & N. W. R. Co., 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (N. S.) 167; Holden v. United States, 24 App. D. C. 318; Schaeffer v. Burnett, 120 Ill. App. 79; Ackerman v. Green, 201 Mo. 231, 100 S. W. 30. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[81] Goodrich v. Russell, 42 N. Y. 177. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

Private Acts in Pari Materia

The rule which requires the comparison of statutes in pari materia, for the purpose of construction, does not apply to private acts. A statute conferring special privileges or imposing particular obligations is not to be construed by reference to any other private act, unless, indeed, the two relate to the very same parties and the identical subject-matter. Such private statutes stand upon the same basis with contracts by deed, which, generally, are not to be affected by evidence aliunde. "It is unquestionably a correct principle," says Mellen, C. J., "that public statutes made in pari materia should be construed as though their several provisions were embraced in one act, or that one act may be explained and construed by comparison with another, all having a general relation to the same subject-matter. It is at least doubtful, even in the construction of public statutes, whether the principle before stated can in any case be admitted where they relate and extend to subjects distinct and independent of each other, which have been the occasion of legislation at successive periods. Be this as it may, there is a manifest distinction between a public statute, which is of universal concernment and obligation and prescribes a rule of action to all, and a grant by the legislature, or a private act granting certain chartered privileges to individuals, or to be executed by persons appointed for the purpose and under bond for their fidelity. The former is the declaration of the sovereign will, and when constitutionally proclaimed it becomes binding on all citizens, without any subsequent assent on their part, express or implied. But such is not the effect of a grant or charter of privileges to individuals, or of any private act to be executed in the manner before mentioned. Such an act, though passing with all constitutional sanctions, possesses no binding force, even on the grantees of such chartered privileges, unless expressly or by implication accepted by them, or on those appointed to carry its provisions into execution, until they have accepted the appointment and subjected themselves to a legal obligation to perform the duties it imposes. Then, and not otherwise, it is in effectual operation. And

why is it not? Simply because such an act is in the nature of a contract, to the perfection of which the assent of two or more minds is always necessary. Can an individual, when he receives a grant from the legislature, or when a private act is passed for his benefit, be bound to look into and carefully examine the language of other grants and private acts, in order to ascertain the true meaning of the grant or act made for his own benefit? This question seems to be of easy solution. If, in the present instance, the condition of the bond had contained a distinct recital of the several duties to be performed by the defendants, without any reference to the act, it would then present the common case of a contract by deed between two parties, in which evidence aliunde could not be admitted to limit or extend the condition, or in any manner be brought in aid of its construction. The same principle must exclude proof aliunde in both cases; for both are cases of contract. In the case at bar, the act itself, being a private act or grant, must be construed by a careful examination of its language, and by no other mode." [82] In pursuance of this principle, it is held that where separate statutes are passed, each chartering a boom company and authorizing the erection of a boom, they must be interpreted separately, though both become the property of one company; and an act consolidating the two companies will not change the liability of either under its act of incorporation.[83] But a charter of a municipal corporation is not a private act within the meaning of this rule. Thus, where a statute, in granting to the

[82] Thomas v. Mahan, 4 Me. 513. "Private acts of the legislature, conferring distinct rights on different individuals, which never can be considered as being one statute or the parts of a general system, are not to be interpreted by a mutual reference to each other. As well might a contract between two persons be construed by the terms of another contract between different persons. The obligation of a contract cannot be impaired by this indirect proceeding." United Society v. President, etc., of Eagle Bank of New Haven, 7 Conn. 456. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾, 246; Cent. Dig. §§ 301–306, 327.*

[83] Gould v. Langdon, 43 Pa. 365. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

mayor and aldermen of a city certain powers with reference to the removal of other municipal officers, uses the same language found in an existing statute in conferring a similar power upon another city, it is presumed that the words were intended to bear the same meaning in both acts.[84]

Constitutional and Statutory Provisions in Pari Materia

It has sometimes been said that statutory enactments and constitutional provisions, when in pari materia, are to be read and construed together as forming one system.[85] It is true, as already explained, that every statute should be so construed, if possible, as to make it harmonize with the provisions of the constitution and so as to avoid any conflict between them, so that the act, if it can be done, shall be saved from the charge of unconstitutionality. But the question here presented is different. The object of comparing one statute with another statute in pari materia is not solely to reconcile any apparent differences between them, but also to find the explanation of obscure or ambiguous provisions in the one by the aid of the other. In respect to this latter purpose, it is at least doubtful whether a statute may be compared with the constitution, as it might be compared with another statute. The objections to such a course are well stated by the Supreme Court of South Carolina, in the following terms: "Where enactments separately made are read in pari materia, they are treated as having formed, in the mind of the enacting body, parts of a connected whole, though considered by such body at different moments of time and under distinct and separate aspects of the common subject. Such a principle is in harmony with the actual practice of legislative bodies, and it is essential to give unity to the laws and a consistent embodiment in a connected system. It is difficult to see how this principle can become the means of connecting, for the purpose of con-

[84] Hagerty v. Shedd, 75 N. H. 393, 74 Atl. 1055. *See "Statutes. Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[85] Billingsley v. State, 14 Md. 369. And see St. George v. Hardie, 147 N. C. 88, 60 S. E. 920; Commonwealth v. International Harvester Co., 131 Ky. 551, 115 S. W. 703, 133 Am. St. Rep. 256. *See "Statutes," Dec. Dig. (Key No.) §§ 224, 225; Cent. Dig. §§ 302, 303.*

struction, clauses and provisions of a constitution established by an authority distinct from and independent of such legislative body, and proceeding by different methods, with the enactment of a strictly legislative body. As the two bodies cannot in their nature unite to carry out a common purpose, it is difficult to see how their independent enactments can be treated as if they had such capacity and intention." [86]

HARMONIZING THE LAWS

105. Every statute should receive such a construction as will make it harmonize with the pre-existing body of law. Antagonism between the act to be interpreted and the previous laws, whether statutory or unwritten, is to be avoided, unless it was clearly the intention of the legislature that such antagonism should arise.

A legislative act is always to be considered with reference to the pre-existing body of law, to which it is added and of which it is thenceforth to form a part. No law can be viewed in a condition of isolation or as the beginning of a legal system.[87] Further, it is always to be presumed that the legislature, in drafting and enacting any particular statute, had full knowledge and took full cognizance of all existing laws on the same subject or relating thereto.[88] And it is a presumption of equal force and applicability that the legislative body did not intend to be inconsistent with

[86] State v. Williams, 13 S. C. 546. *See "Statutes," Dec. Dig. (Key No.) §§ 224, 225; Cent. Dig. §§ 302, 303.*

[87] Glaser v. Rothschild, 221 Mo. 180, 120 S. W. 1, 22 L. R. A. (N. S.) 1045; Minnich v. Packard, 42 Ind. App. 371, 85 N. E. 787. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[88] Johns v. Town of Sheridan, 44 Ind. App. 620, 89 N. E. 899; Reed v. Goldneck, 112 Mo. App. 310, 86 S. W. 1104; In re Simmons, 195 N. Y. 573, 88 N. E. 1132; State v. Southern Ry. Co., 145 N. C. 495, 59 S. E. 570, 13 L. R. A. (N. S.) 966; State v. Rutland R. Co., 81 Vt. 508, 71 Atl. 197; State v. Harden, 62 W. Va. 313, 58 S. E. 715. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

itself, to keep contradictory enactments on the statute book, to make unnecessary changes in the existing laws, or to repeal statutes by mere implication.[89] Hence arises the rule that, in case of any doubt or ambiguity, a statute is to be so construed as not only to be consistent with itself throughout its whole extent, but also to harmonize with the other laws relating to the same or kindred matters, forming a complete, consistent, and intelligible system,[90] and also so as not to conflict further than necessary with the general and established principles of the law, whether statutory or unwritten.[91]

[89] State ex rel. Atty. Gen. v. Givens, 48 Fla. 165, 37 South. 308. And see infra, pp. 349, 351. *See "Statutes," Dec. Dig.* (*Key No.*) §§ *223–225¾; Cent. Dig.* §§ *301–306.*

[90] United States v. Babbit, 1 Black, 55, 17 L. Ed. 94; Riggs v. Pfister, 21 Ala. 469; State ex rel. Ward v. Martin, 160 Ala. 190, 48 South. 847; Curry v. Lehman, 55 Fla. 847, 47 South. 18; Boyer v. Onion, 108 Ill. App. 612; Board of Commissioners of La Grange County v. Cutler, 6 Ind. 354; Ensley v. State, 172 Ind. 198, 88 N. E. 62; Cahill v. State, 36 Ind. App. 507, 76 N. E. 182; Lincoln School Tp. v. American School Furniture Co., 31 Ind. App. 405, 68 N. E. 301; Willson v. Hahn, 131 Ky. 439, 115 S. W. 231; Commonwealth v. International Harvester Co., 131 Ky. 551, 115 S. W. 703, 133 Am. St. Rep. 256; Commonwealth v. King, 202 Mass. 379, 88 N. E. 454; Brooks v. Fitchburg & L. St. R. Co., 200 Mass. 8, 86 N. E. 289; Sheldon v. Boston & A. R. Co., 172 Mass. 180, 51 N. E. 1078; State ex rel. Kellogg v. Bishop, 41 Mo. 16; Macke v. Byrd, 131 Mo. 682, 33 S. W. 448, 52 Am. St. Rep. 649; State ex rel. Brooks v. Fransham, 19 Mont. 273, 48 Pac. 1; State v. Babcock, 21 Neb. 599, 33 N. W. 247; State v. Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979; Chappell v. Lancaster County, 84 Neb. 301, 120 N. W. 1116; Smith v. People, 47 N. Y. 330; In re New York, W. & B. Ry. Co., 193 N. Y. 72, 85 N. E. 1014; Propst v. Southern R. Co., 139 N. C. 397, 51 S. E. 920; Fortune v. Buncombe County Com'rs, 140 N. C. 322, 52 S. E. 950; Carpenter v. Russell, 13 Okl. 277, 73 Pac. 930; Masterson v. Whipple, 27 R. I. 192, 61 Atl. 446; Twiggs v. State Board of Land Com'rs, 27 Utah, 241, 75 Pac. 729; Bowe v. City of Richmond, 109 Va. 254, 64 S. E. 51; Williams v. Keith (Tex. Civ. App.) 111 S. W. 1056; Reeves v. Ross, 62 W. Va. 7, 57 S. E. 284; State v. Snyder, 64 W. Va. 659, 63 S. E. 385; Abingdon Mills v. Grogan (Ala.) 52 South. 596; State ex rel. Halsey v. Clayton, 226 Mo. 292, 126 S. W. 506. *See "Statutes," Dec. Dig.* (*Key No.*) §§ *223–225¾; Cent. Dig.* §§ *301–306.*

[91] Old Dominion B. & L. Ass'n v. Sohn, 54 W. Va. 101, 46 S. E. 222;

It was an ancient maxim of the law that "interpretare et concordare leges legibus est optimus interpretandi modus;" that is, to interpret, and (to do it in such a way as) to harmonize laws with laws, is the best method of interpretation.[92] It is not permissible, if it can be reasonably avoided, to put such a construction upon a law as will raise a conflict between different parts of it, but effect should be given to each and every clause and provision. But when there is no way of reconciling conflicting clauses of a statute, and nothing to indicate which the legislature regarded as of paramount importance, force should be given to those clauses which would make the statute in harmony with the other legislation on the same subject, and which would tend most completely to secure the rights of all persons affected by such legislation.[93] And so, where an action is brought under a particular section of a statute, which, considered alone, is in conflict with the constitution, and it appears that such statute, as a whole, is in harmony with the constitution, such construction should be given to the particular section as will harmonize with the statute, when considered in the light of the whole enactment.[94] Again, where two statutes on the same subject, or on related subjects, are apparently in conflict with each other, they are to be reconciled, by construction, so far as may be, on any fair hypothesis, and validity and effect given to both, if this can be done without destroying the evident intent and meaning of the later act.[95]

Lowe v. Yolo County Consol. Water Co., 8 Cal. App. 167, 96 Pac. 379; Coal & Coke R. Co. v. Conley (W. Va.) 67 S. E. 613. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[92] Stoughter's Case, 8 Coke, 169a. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[93] Kansas Pac. Ry. Co. v. Wyandotte County Com'rs, 16 Kan. 587. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[94] Stump v. Hornback, 94 Mo. 26, 6 S. W. 356. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[95] Beals v. Hale, 4 How. 37, 11 L. Ed. 865; Merrill v. Gorham, 6 Cal. 41; Commercial Bank of Natchez v. Chambers, 8 Smedes & M. (Miss.) 9; Attorney General ex rel. Taylor v. Brown, 1 Wis. 513; Pearce v. Atwood, 13 Mass. 324. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

Thus, a statutory rule must be construed consistently with the whole system of pleading and practice of which it forms a part.[96] When the power to hear and determine statutory misdemeanors is given to a municipal corporation, but no words of exclusion or restriction are used, the remedies between the state and the corporation will be construed to be concurrent; but where the manifest intention is that the prosecution shall be limited exclusively to one jurisdiction, that intention must prevail.[97] Again, of two constructions, either of which is warranted by the words of an amendment to a public act, that is to be preferred which best harmonizes the amendment with the general tenor and spirit of the act amended.[98] And it has been said that while laws must be construed so as to harmonize, if possible, yet, if two statutes interfere, that should be followed which is recommended by the most beneficial reasons.[99] Even where later statutes do plainly abrogate settled practice or repeal former statutes, they are to be expounded as near to the use and reason of the prior law as can be, without violation of their intent.[100] But statutes of a later date should be given a controlling preponderance where there is any inconsistency or uncertainty, so as to enforce the intent of the legislature.[101]

State Statutes and Acts of Congress

Since a valid act of Congress is a part of the "supreme law of the land," and any state statute which is in conflict

[96] McDougald v. Dougherty, 14 Ga. 674. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[97] State v. Gordon, 60 Mo. 383. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾, 230; Cent. Dig. §§ 301–306, 311.*

[98] Cæsar Griffin's Case, Chase, Dec. 364, Fed. Cas. No. 5,815. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾, 230; Cent. Dig. §§ 301–306, 311.*

[99] Kane v. Kansas City, Ft. S. & M. Ry. Co., 112 Mo. 34, 20 S. W. 532. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[100] People's Trust, Savings & Deposit Co. v. Ehrhart, 34 Pa. Super. Ct. 16. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[101] State v. Kiley, 36 Ind. App. 513, 76 N. E. 184. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

with it is to that extent void and inoperative,[102] it follows that the state courts, when construing a law of the state which covers the same ground as an act of Congress or applies to the same subject-matter, should always endeavor to interpret the statute in such a manner as will avoid conflict or repugnancy, or the usurpation of authority vested in the federal government, and leave the state law operative and effective.[103]

PRESUMPTION AGAINST UNNECESSARY CHANGE OF LAWS

106. It is presumed that the legislature does not intend to make unnecessary changes in the pre-existing body of law. The construction of a statute will therefore be such as to avoid any change in the prior laws beyond what is necessary to effect the specific purpose of the act in question.[104]

[102] Gulf, C. & S. F. R. Co. v. Hefley, 158 U. S. 98, 15 Sup. Ct. 802, 39 L. Ed. 910. And see Black, Const. Law (3d Ed.) page 37. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[103] Codlin v. Kohlhousen, 9 N. M. 565, 58 Pac. 499; Wilson v. Bradley, 105 Ky. 52, 48 S. W. 1088. Compare Turner v. Neosho County Com'rs, 27 Kan. 639. *See "Statutes," Dec. Dig. (Key No.) §§ 223–225¾; Cent. Dig. §§ 301–306.*

[104] Manuel v. Manuel, 13 Ohio St. 458; Sikes v. St. Louis & S. F. R. Co., 127 Mo. App. 326, 105 S. W. 700; State v. Hooker, 22 Okl. 712, 98 Pac. 964; Bear's Adm'r v. Bear, 33 Pa. 525; Thompson v. Mylne, 4 La. Ann. 206; Childers v. Johnson, 6 La. Ann. 634. "One of these presumptions is that the legislature does not intend to make any change in the law beyond what it explicitly declares, either in express terms or by unmistakable implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters beyond, the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness; and to give any such effect to general words, simply because, in their widest and perhaps natural sense, they have that meaning, would be to give them a meaning in which they are not really used." Maxwell, Interp. (2d Ed.) 96. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

"The intention of the legislature in enacting a particular statute is not to be ascertained by interpreting the statute by itself alone, and according to the mere literal meaning of its words. Every statute must be construed in connection with the whole system of which it forms a part, and in the light of the common law and of previous statutes upon the same subject. And the legislature is not to be lightly presumed to have intended to reverse the policy of its predecessors or to introduce a fundamental change in long-established principles of law." [105] Thus, for example, a statute authorizing married women to hold, convey, and devise real property the same as if sole, will not empower a married woman to convey to her husband, by deed, her dower rights in his real estate. The Supreme Court of New York, in making this decision, said that the legislature could not have intended "so violent an innovation upon the existing law"; the safer and more reasonable construction would restrict the right of a married woman to convey to persons other than her husband.[106] So it is held that an act containing no negative words, and providing that all former deeds shall have a certain effect if such and such requisites are observed, does not prevent the deeds from being used as evidence in the same manner as they might have been used before the act was passed.[107] And where a corporation, incorporated as a road and bridge company, was permitted, by a subsequent act of the legislature, to form itself into two distinct companies, one designated a turnpike company, and the other a bridge company, it was held that it did not exonerate the officers of the road company from the penalties imposed by the original act, it being manifest that the legislature did not intend to relieve them from their liabilities.[108] So, again, a California act in

[105] Robinson's Case, 131 Mass. 376, 41 Am. Rep. 239. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[106] Graham v. Van Wyck, 14 Barb. 531. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[107] Jackson ex dem. Van Denberg v. Bradt, 2 Caines, 169. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[108] Kane v. People, 8 Wend. 203. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

relation to the taking of lands by water companies provided that the proceedings should be conducted as prescribed for railroad companies under the act of 1853. The railroad act was repealed by a subsequent law passed in 1861. It was held that proceedings for the taking of land by water companies were not affected by the change.[109] But, on the other hand, where a statute regulating procedure is changed, it must be presumed that the legislature intended to establish a different rule.[110]

PRESUMPTION AGAINST IMPLIED REPEAL OF LAWS

107. Repeals by implication are not favored. A statute will not be construed as repealing prior acts on the same subject (in the absence of express words to that effect) unless there is an irreconcilable repugnancy between them, or unless the new law is evidently intended to supersede all prior acts on the matter in hand and to comprise in itself the sole and complete system of legislation on that subject.

The presumption being, as just stated, against any intention to make unnecessary changes in the laws, it follows that there is also a presumption against repeals by implication. Every new statute should be construed in connection with those already existing in relation to the same subject-matter, and all should be made to harmonize and stand together, if that can be done by any fair and reasonable interpretation, and if the new act does not expressly declare the repeal of an earlier statute, it will not be construed as effecting such repeal unless there is such a repugnancy or conflict between the provisions of the two acts as to show that they could not have been designed to remain equally

[109] Spring Valley Water Works v. City of San Francisco, 22 Cal. 434. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

[110] McLean v. Moran, 38 Mont. 298, 99 Pac. 836. *See "Statutes," Dec. Dig. (Key No.) § 225; Cent. Dig. §§ 302, 303.*

in force.[111] "Repeals by implication," says the court in Maryland, "are things disfavored by law, and never allowed but when the inconsistency and repugnancy are plain and unavoidable; and if laws and statutes seem contrary to one another, yet if, by interpretation, they may stand together, they shall stand; and when two laws only so far disagree or differ as that by any other construction they may both stand together, the rule that 'leges posteriores priores contrarias abrogant' does not apply, and the latter is no repeal of the former." [112] "Where a new act is couched in general affirmative language, and the previous law can well stand with it, and if the language used in the later act is all in the affirmative, there is nothing to say that the previous law shall be repealed, and therefore the old and the new laws may stand together. There the general affirmative words of the new law would not of themselves repeal the old." [113] For instance, it is a well-settled rule of construction, applicable to all remedial laws, that where a new remedy or mode of proceeding is authorized, without an express repeal of a former one relating to the same matter, it is to be regarded as merely cumulative, creating a concurrent remedy, and not as abrogating the former mode of procedure.[114] Thus, if a statute provides that appeals from the judgments of the county courts in certain cases "may" be taken to the supreme court, it is not to be con-

[111] Lowman v. Billington, 65 Misc. Rep. 111, 119 N. Y. Supp. 825; Haggett v. Hurley, 91 Me. 542, 40 Atl. 561, 41 L. R. A. 362; Reeves v. Ross, 62 W. Va. 7, 57 S. E. 284; Robbins v. State, 8 Ohio St. 131, 191; Casey v. Harned, 5 Iowa, 1; Selman v. Wolfe, 27 Tex. 68; Morris v. Delaware & S. Canal, 4 Watts & S. (Pa.) 461; Crouch v. Hayes, 98 N. Y. 183; Peyton v. Moseley, 3 T. B. Mon. (Ky.) 77; Barringer v. City Council of Florence, 41 S. C. 501, 19 S. E. 745. *See "Statutes," Dec. Dig. (Key No.) §§ 158–167; Cent. Dig. §§ 228–243.*

[112] Mayor, etc., of City of Cumberland v. Magruder, 34 Md. 381. And see McAfee v. Southern R. Co., 36 Miss. 669. *See "Statutes," Dec. Dig. (Key No.) §§ 158–167; Cent. Dig. §§ 228–243.*

[113] Hardcastle, Stat. Law (2d Ed.) 346. *See "Statutes," Dec. Dig. (Key No.) §§ 158–167, 225; Cent. Dig. §§ 228–243, 302, 303.*

[114] Raudebaugh v. Shelley, 6 Ohio St. 307. *See "Statutes," Dec. Dig. (Key No.) §§ 158–167; Cent. Dig. §§ 228–243.*

strued as imperative, and therefore it does not repeal by implication the provisions of an earlier statute which gave an appeal in such cases to the circuit courts.[115] And "even if a subsequent statute, taken strictly and grammatically, is contrariant to a previous statute, yet if, at the same time, the intention of the legislature is apparent that the previous statute should not be repealed, it has been in several cases held that the previous statute is to remain unaffected by the subsequent one." [116]

But if the two acts are positively repugnant, and to such an extent that they cannot be reconciled and made to stand together by any fair and reasonable construction, then the one last passed will control and will repeal the earlier law.[117] In this case, the rule is, "Leges posteriores priores contrarias abrogant." [118] "If two inconsistent acts be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. Every act of Parliament must be considered with reference to the state of the law subsisting when it came into operation and when it is to be applied; it cannot otherwise be rationally construed. Every act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment." [119] Thus, if the legislature grants the same power over a particular matter to two public bodies (as, to the trustees of a public canal and also to a city) and the grants are repugnant, so that the concurrent exercise of the power

[115] Fowler v. Pirkins, 77 Ill. 271. *See "Statutes," Dec. Dig. (Key No.) §§ 158–167; Cent. Dig. §§ 228–243.*

[116] Hardcastle, Stat. Law (2d Ed.) 356.

[117] State v. Miskimmons, 2 Ind. 440; Swinney v. Ft. Wayne, M. & C. R. Co., 59 Ind. 205; Commissioners of Highways v. Deboe, 43 Ill. App. 25; Branagan v. Dulaney, 8 Colo. 408, 8 Pac. 669; Branham v. Long, 78 Va. 352; Pease v. Whitney, 5 Mass. 380. *See "Statutes," Dec. Dig. (Key No.) § 159; Cent. Dig. § 229.*

[118] Broom, Max. 27.

[119] Dean and Chapter of Ely v. Bliss, 5 Beav. 574. *See "Statutes," Dec. Dig. (Key No.) § 159; Cent. Dig. § 229.*

by the two bodies is impossible, the last expressed will of the legislature must control.[120] Again, acts which, although in pari materia, grant a right conditioned on different things, are inconsistent, and by reason of this inconsistency the later will repeal the earlier.[121] So, where there are two statutes imposing a penalty for the same offense, and the penalty imposed by the one is not the same as that imposed by the other, the later statute repeals the earlier; for the intention to inflict two punishments for the same offense is not to be imputed to the legislature.[122] And again, if a subsequent statute requires the same and more than a former statute prescribed, this is a repeal of the earlier law, so far as the subsequent statute renders more necessary than the first required.[123]

If one statute enacts something in general terms, and afterwards another statute is passed on the same subject, which, although expressed in affirmative language, introduces special conditions or restrictions, the subsequent statute will usually be considered as repealing by implication the former; for "affirmative statutes introductive of a new law do imply a negative." [124] More especially when the later act is expressed in negative terms, as where, for example, it prohibits a certain thing from being done, or where it declares that a given act shall be performed in a certain manner "and not otherwise," it is usually impossible to escape the conclusion that earlier acts are repealed by it. And if the coexistence of the two sets of provisions would be destructive of the object for which the later act was passed, it is clear that there must be an implied repeal. A

[120] Korah v. City of Ottawa, 32 Ill. 121, 83 Am. Dec. 255. *See "Statutes," Dec. Dig. (Key No.) § 159; Cent. Dig. § 229.*

[121] Gwinner v. Lehigh & D. G. R. Co., 55 Pa. 126. *See "Statutes," Dec. Dig. (Key No.) §§ 159, 225; Cent. Dig. §§ 229, 302, 303.*

[122] Gorman v. Hammond, 28 Ga. 85. *See "Statutes," Dec. Dig. (Key No.) §§ 159, 225; Cent. Dig. §§ 229, 302, 303.*

[123] Gorham v. Luckett, 6 B. Mon. (Ky.) 146. *See "Statutes," Dec. Dig. (Key No.) §§ 159, 225; Cent. Dig. §§ 229, 302, 303.*

[124] Hardcastle, Stat. Law (2d Ed.) 353. And see Isham v. Bennington Iron Co., 19 Vt. 230. *See "Statutes," Dec. Dig. (Key No.) §§ 159–167; Cent. Dig. §§ 229–243.*

provision in a general law may be repealed, pro tanto, by a provision in a charter of a municipal corporation, granted after the enactment of the law; and such repeal will be held to have been intended where the two provisions are in direct conflict, or where the intention of the legislature to that effect is plainly expressed.[125] "Not only statutes passed at different sessions of the legislature may thus affect each other, but a repeal by implication has been effected where two inconsistent enactments have been passed at the same session, even while the earlier act was in its progress to become a law, but before it had become so by the executive approval; it being said that the parliamentary rule that an act shall not be repealed at the session at which it was passed has no reference to repeal by implication." [126]

Where it is necessary to hold an earlier statute impliedly repealed by a later one, on account of the repugnancy between them, the extent of the repeal will be measured by the extent of the necessary conflict or inconsistency between them; and if there are any parts or provisions of the earlier law which may stand as unaffected by the later act, they will not be held repealed thereby.[127]

Even where there is no direct repugnancy or inconsistency between the earlier and the later law, there may in some cases be an implied repeal. This result follows where the later act revises, amends, and sums up the whole law on the particular subject to which it relates, covering all the ground treated of in the earlier statute, and adding new or different provisions, and thus plainly shows that it was intended to supersede any and all prior enactments on that

[125] Tierney v. Dodge, 9 Minn. 166 (Gil. 153). *See "Statutes," Dec. Dig. (Key No.) §§ 159–167; Cent. Dig. §§ 229–243.*

[126] Endlich, Interp. § 188, citing Southwark Bank v. Commonwealth, 26 Pa. 446; Spencer v. State, 5 Ind. 41. And see Heilig v. City Council of Puyallup, 7 Wash. 29, 34 Pac. 164; Planters' Bank of Tennessee v. Black, 11 Smedes & M. (Miss.) 43. *See "Statutes," Dec. Dig. (Key No.) § 159; Cent. Dig. § 229.*

[127] State v. Grady, 34 Conn. 118; Wood v. United States, 16 Pet. 342, 10 L. Ed. 987; Putnam v. Ruch (C. C.) 54 Fed. 216. *See "Statutes." Dec. Dig. (Key No.) § 159; Cent. Dig. § 229.*

subject-matter, and to furnish, for the future, in itself alone, the whole and only system of statute law applicable to that subject.[128] "Every statute," says the court in New Jersey, "must be considered according to what appears to have been the intention of the legislature, and even though two statutes relating to the same subject be not, in terms, repugnant or inconsistent, if the later statute is clearly intended to prescribe the only rule which should govern the case provided for, it will be construed as repealing the original act. The rule does not rest strictly upon the ground of repeal by implication, but upon the principle that when the legislature makes a revision of a particular statute, and frames a new statute upon the subject-matter, and from the framework of the act it is apparent that the legislature designed a complete scheme for this matter, it is a legislative declaration that whatever is embraced in the new law shall prevail, and whatever is excluded is discarded. It is decisive evidence of an intention to prescribe the provisions contained in the later act as the only ones on that subject which shall be obligatory." [129] Where a statute is revised, or one act framed from another, some parts being omitted, the parts omitted are not to be revived by construction, but are to be considered as annulled.[130]

[128] United States v. Tynen, 11 Wall. 88, 20 L. Ed. 153; Oleson v. Green Bay & L. P. Ry. Co., 36 Wis. 383; Fox's Adm'rs v. Commonwealth, 16 Grat. (Va.) 1. The common law is constructively repealed by a statute which revises the whole subject and is inconsistent with its continued operation. State v. Wilson, 43 N. H. 415, 82 Am. Dec. 163. *See "Statutes," Dec. Dig. (Key No.) § 159; Cent. Dig. § 229.*

[129] Roche v. Mayor, etc., of Jersey City, 40 N. J. Law, 257. See *"Statutes," Dec. Dig. (Key No.) § 159; Cent. Dig. § 229.*

[130] Ellis v. Paige, 1 Pick. (Mass.) 43. *See "Statutes," Dec. Dig. (Key No.) § 167; Cent. Dig. §§ 242, 248.*

CHAPTER IX

INTERPRETATION WITH REFERENCE TO COMMON LAW

108. Common Law in Force in the United States.
109. Construction with Reference to Common Law.
110. Statutes Affirming Common Law.
111. Statutes Supplementing Common Law.
112. Statutes Superseding Common Law.
113. Statutes in Derogation of Common Law.

COMMON LAW IN FORCE IN THE UNITED STATES

108. The English common law, in so far as it is applicable in this country, and where it has not been abrogated or changed by constitutional or statutory enactments, is in force in the several American states.

Generally speaking, the common law of England, except in so far as it has been repealed or modified by constitutions or statutes, is in force in the several states of the American Union.[1] Not only do its principles permeate our sys-

[1] Marburg v. Cole, 49 Md. 402, 33 Am. Rep. 266; Hollman v. Bennett, 44 Miss. 322; Van Ness v. Pacard, 2 Pet. 137, 7 L. Ed. 374; Stewart v. Stearns & Culver Lumber Co., 56 Fla. 570, 48 South. 19, 24 L. R. A. (N. S.) 649; State v. Mays, 57 Wash. 540, 107 Pac. 363. In the thirteen original states, the English common law was already in force at the time of the American Revolution. It was not abrogated or abolished by that event; it simply has ever since continued to be the law of the state except in so far as it has been changed by the constitutions or statutes. But all the immense territory which was acquired by the United States in 1804 by the "Louisiana Purchase" had never been under the British dominion, and consequently was never governed by the common law. All the states which have been carved out of that territory were without the inheritance of the common law, and that system did not, and does not now, prevail in any of those states to any extent, except in so far as it has been introduced or adopted by legislative enactment. Many of the states in question, however, have adopted the common law so far as it is applicable to their local conditions and needs and not inconsist-

tem of jurisprudence, but its specific rules and doctrines are looked to by the courts as furnishing the grounds for their decisions in cases not otherwise explicitly provided for.[2] In many of the states, either a clause of the constitution or a statutory provision adopts and continues in force the body of the common law, save as it may have been rejected or changed by positive law.[3] The American colonists brought this law with them from the home of their race, and adopted it and lived under its precepts as naturally and inevitably as they continued to use their mother tongue. But it would be error to suppose that they adopted, or that the legislative and constitutional provisions of which we have spoken continued in force, the entire body of the common law, with every one of its rules, doctrines, and principles. It has always been the understanding that that law was accepted and put in force by the founders of the American states, and continued in force by those provisions, only in so far as it was applicable to the conditions and circumstances of this country. There are many particulars in which the common law would be entirely unsuited to the conditions and needs of our country and our life. Where it is inapplicable to the spirit, the genius, or the objects of our political or social institutions; where it does not accord with or suit the habits of our people; where it is rendered inapplicable by the

ent with their constitutions and statutes. See Herr v. Johnson, 11 Colo. 395, 18 Pac. 342; Mathieson v. St. Louis & S. F. R. Co., 219 Mo. 542, 118 S. W. 9. *See "Common Law," Dec. Dig. (Key No.) §§ 1, 10–13; Cent. Dig. §§ 1, 2, 9–12.*

[2] See, for example, State ex rel. O'Malley v. Musick, 145 Mo. App. 33, 130 S. W. 398, where recourse was had to the common law to determine when an action on a notary's bond should be considered as accruing, since no provision of the general statute of limitations or of any other statute expressly covered the point. *See "Common Law," Dec. Dig. (Key No.) §§ 1, 12, 14; Cent. Dig. §§ 1–3, 10.*

[3] Marmaduke v. People, 45 Colo. 357, 101 Pac. 337; Mills' Ann. St. Colo. § 4184. But a statute adopting the common law of England as a basis of criminal jurisprudence does not adopt subsequent English enactments. State v. Davis, 22 La. Ann. 77. *See "Common Law," Dec. Dig. (Key No.) §§ 1, 10–14; Cent. Dig. §§ 1–3, 9–12.*

physical conformation or the natural characteristics of the land, in these and similar cases it is not in force.[4] All those features which depend upon the existence of a monarchical form of government have thus been eliminated. The common-law test of the navigability of rivers has been rejected.[5] The common-law doctrine of riparian rights is not in force in those states where mining is the paramount interest and where the arid nature of the land renders such doctrines inapplicable.[6] The rule of the common law requiring the owner of cattle to keep them within fences and prevent their straying on the lands of others has no place in the new and sparsely settled states of the West. These illustrations (which might be indefinitely multiplied) will suffice to show the meaning of the rule that the common law is to be considered as having been adopted and continued in force only so far as it is applicable to the circumstances of the particular state. The courts are never precluded from considering this question of applicability, even

[4] See 1 Kent, Comm. 473; 1 Washburn, Real Prop. (4th Ed.) 36; Van Ness v. Pacard, 2 Pet. 137, 144, 7 L. Ed. 374; Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 21 Pac. 317, 4 L. R. A. 60, 19 Am. St. Rep. 364; Bogardus v. Trinity Church, 4 Paige (N. Y.) 198; Seeley v. Peters, 5 Gilman (Ill.) 130; People v. Canal Appraisers, 33 N. Y. 461; Scheuermann v. Scharfenberg, 163 Ala. 337, 50 South. 335, 24 L. R. A. (N. S.) 369; Cooper v. Seaverns, 81 Kan. 267, 105 Pac. 509, 25 L. R. A. (N. S.) 517. *See "Common Law," Dec. Dig. (Key No.) §§ 1, 10–14; Cent. Dig. §§ 1–3, 9–12.*

[5] The Genesee Chief v. Fitzhugh, 12 How. 443, 13 L. Ed. 1058. *See "Navigable Waters," Dec. Dig. (Key No.) § 1; Cent. Dig. §§ 5–16.*

[6] Sternberger v. Seaton Mining Co., 45 Colo. 401, 102 Pac. 168; Oppenlander v. Left Hand Ditch Co., 18 Colo. 142, 31 Pac. 854; Wheeler v. Northern Colo. Irr. Co., 10 Colo. 587, 17 Pac. 487, 3 Am. St. Rep. 603; Hutchinson v. Watson Slough Ditch Co., 16 Idaho, 484, 101 Pac. 1059, 133 Am. St. Rep. 125; Kirk v. Bartholomew, 3 Idaho, 367, 29 Pac. 40; Bigelow v. Draper, 6 N. D. 152, 69 N. W. 570; Reno Smelting, etc., Works v. Stevenson, 20 Nev. 269, 21 Pac. 317, 4 L. R. A. 60, 19 Am. St. Rep. 364; Stowell v. Johnson, 7 Utah, 215, 26 Pac. 290; Moyer v. Preston, 6 Wyo. 308, 44 Pac. 845, 71 Am. St. Rep. 914. *See "Navigable Waters," Dec. Dig. (Key No.) §§ 39–46; Cent. Dig. §§ 239–293; "Waters and Water Courses," Dec. Dig. (Key No.) §§ 34–50; Cent. Dig. §§ 27–41.*

where the constitution or a statute specifically adopts the common law as the rule of decision in the courts of the state.[7]

CONSTRUCTION WITH REFERENCE TO COMMON LAW

109. Statutes are to be read in the light of the common law and construed with reference thereto.

When any question arises as to the meaning or the scope of a statutory enactment, it is a good rule to compare it with the common law on the same subject, and to construe the statute with reference to that law.[8] This is but an extension of the rule, already noticed in these pages, that a doubtful or ambiguous statute is to be construed with all acts in pari materia, and adjusted and harmonized, as far as possible, with the existing laws applicable to the same subject-matter. No statute enters a field which was before entirely unoccupied. It either affirms, modifies, or repeals some portion of the previously existing law. In order, therefore, to form a correct estimate of its scope and effect, it is necessary to have a thorough understanding of the laws, both common and statutory, which heretofore were applicable to the same subject. Whether the statute affirms the rule of the common law on the same point, or whether it supplements it, supersedes it or displaces it, the legislative enactment must be construed with reference to the common law; for in this way alone is it possible to reach

[7] Reno Smelting, etc., Works v. Stevenson, 20 Nev. 269, 21 Pac. 317, 4 L. R. A. 60, 19 Am. St. Rep. 364. *See "Common Law," Dec. Dig. (Key No.) §§ 1, 10–14; Cent. Dig. §§ 1–3, 9–12.*

[8] Scaife v. Stovall, 67 Ala. 237; Howe v. Peckham, 6 How. Prac. (N. Y.) 229; Johnson v. Fluetsch, 176 Mo. 452, 75 S. W. 1005; Chichester v. Vass, 1 Call (Va.) 83, 1 Am. Dec. 509; State v. Central Vermont R. Co., 81 Vt. 459, 71 Atl. 193, 21 L. R. A. (N. S.) 949; Perry v. Strawbridge, 209 Mo. 621, 108 S. W. 641, 16 L. R. A. (N. S.) 244, 123 Am. St. Rep. 510; State ex rel. Morris v. Sullivan, 81 Ohio St. 79, 90 N. E. 146, 26 L. R. A. (N. S.) 514. *See "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

a just appreciation of its purpose and effect. Again, the common law must be allowed to stand unaltered as far as is consistent with a reasonable interpretation of the new law. "The general rule in the exposition of all acts of Parliament is this, that in all doubtful matters, and where the expression is in general terms, they are to receive such a construction as may be agreeable to the rules of the common law in cases of that nature; for statutes are not presumed to make any alteration in the common law further or otherwise than the act does expressly declare; and therefore in all general matters the law presumes the act did not intend to make any alteration, for if the Parliament had had that design, they would have expressed it in the act." [9] And again, if a statute makes use of a word, the meaning of which is well known at common law, the word should be understood in the statute in the same sense in which it was understood at common law.[10]

For example, though the descent and distribution of property is entirely governed by the statute, yet the common law may be considered in construing the act.[11] Again, where there is doubt about the meaning of a provision in a statute covering the whole subject of negotiable instru-

[9] Arthur v. Bokenham, 11 Mod. 148. See, also, Greenwood v. Greenwood, 28 Md. 369; Edwards v. Gaulding, 38 Miss. 118; State ex rel. Morris v. Sullivan, 81 Ohio St. 79, 90 N. E. 146, 26 L. R. A. (N. S.) 514; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Langlois v. Dunn Worsted Mills, 25 R. I. 645, 57 Atl. 910; Millhiser Mfg. Co. v. Gallego Mills Co., 101 Va. 579, 44 S. E. 760; Carley v. Liberty Hat Mfg. Co. (N. J. Sup.) 75 Atl. 543; Davis v. Abstract Const. Co., 121 Ill. App. 121; Keim v. City of Reading, 32 Pa. Super. Ct. 613; McCarthy v. McCarthy, 20 App. D. C. 195. *See "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[10] Mayo v. Wilson, 1 N. H. 53; Walton v. State, 62 Ala. 197; Apple v. Apple, 1 Head (Tenn.) 348; Adams v. Turrentine, 30 N. C. 147; McCool v. Smith, 1 Black, 459, 17 L. Ed. 218; Buckner v. Real Estate Bank, 5 Ark. 536, 41 Am. Dec. 105; State v. Engle, 21 N. J. Law, 347; Truelove v. Truelove, 172 Ind. 441, 86 N. E. 1018, 27 L. R. A. (N. S.) 220; Welty v. United States, 14 Okl. 7, 76 Pac. 121. *See "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[11] Truelove v. Truelove, 172 Ind. 441, 86 N. E. 1018, 27 L. R. A. (N. S.) 220. *See "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

ments, which can be solved by reference to the law merchant, it should be consulted for that purpose, and if it is practicable to do so, the statute should be given such a construction as will make it harmonize with the general principles of commercial law in force before its enactment.[12] So where a statute provided for the punishment of "public indecency," but without defining it, it was held that the common law should be consulted for the meaning of that term, and that the statute could be given no wider scope than was consistent with the common-law significance of that term.[13]

Although the federal courts have no common-law jurisdiction, all their jurisdiction being conferred by the constitution and the acts of Congress, and although their rules of decision are derived from the laws of the states, yet, in construing the statutes of Congress, the rules of interpretation furnished by the common law are the true guides and have been uniformly followed.[14]

STATUTES AFFIRMING COMMON LAW

110. A statute which is in affirmance of a rule of the common law is to be construed, as to its incidents and its consequences, in accordance with the common law.

Where a new statute does not undertake to change the common law relating to its particular subject, or to introduce new rules or new rights or remedies, but only affirms what before existed as a part of that system, it should be construed as near as may be to the rule and reason of the

[12] Wettlaufer v. Baxter, 137 Ky. 362, 125 S. W. 741, 26 L. R. A. (N. S.) 804. *See "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[13] McJunkins v. State, 10 Ind. 140. *See "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301; "Criminal Law," Dec. Dig. (Key No.) § 11; Cent. Dig. §§ 10–12.*

[14] Rice v. Railroad Co., 1 Black, 358, 17 L. Ed. 147. *See "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

common law, and by the course which the common law observes in other cases.[15] And as to its details (not covered by the general language of the statute) and incidental or consequential matters arising out of its application, its interpretation should be in accordance with what was settled at the common law.[16]

STATUTES SUPPLEMENTING COMMON LAW

111. A statute which is supplementary to the common law does not displace that law any further than is clearly necessary. The statute is in general considered as merely cumulative, unless the rights or remedies which it creates are expressly made exclusive.

If a statute recognizes a right already existing at common law and merely gives a new remedy for its infringement, without declaring or implying that such remedy shall be exclusive, it is cumulative, and the party injured is at liberty to pursue either the statutory remedy or that previously existing by the common law. If the statute gives the same remedy which the common law gave, it is merely affirmative, and the party has his election whether to proceed at common law or upon the statute. But if the statute denies or withholds the remedy which before existed at common law, the common-law right ceases to exist, and the statute alone is available to the party.[17] Where the statute does not vest a right in a person, but only prohibits

[15] Cumberland Telephone & Telegraph Co. v. Kelly, 160 Fed. 316, 87 C. C. A. 268. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 10; "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[16] Baker v. Baker, 13 Cal. 87; Hewey v. Nourse, 54 Me. 256. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 10; "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[17] Gooch v. Stephenson, 13 Me. 371; Crittenden v. Wilson, 5 Cow. (N. Y.) 165, 15 Am. Dec. 462; Proprietors of Fryeburg Canal v. Frye, 5 Me. 38. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 10; "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

the doing of some act under a penalty, the party violating the statute is liable only to the penalty; but where a right of property is vested in consequence of the statute, it may be vindicated at common law, unless the statute confines the remedy to the penalty.[18] So also, it is a rule of almost universal application that a statute fixing a penalty for an offense, which does not expressly or by implication cut off the common-law prosecution or punishment for the same offense, intends merely a cumulative remedy.[19] But it is equally well settled that where the legislature has authorized the erection of a public work, by individuals or by a corporation, which may, in its erection or operation, occasion damage to the property of others, and has provided a specific mode of obtaining indemnity, the common-law action on the case, treating such erection as a tort, and regarding the damages given by it as a compensation for an injury done, is taken away, and the party must proceed upon the statute alone. The reason is that under such statutory authorization, the persons erecting or maintaining the public work are not wrongdoers, and it cannot be treated as a tort.[20] Statutory regulations, it is said, for the exercise of a pre-existing common-law right should not be construed by the same rigid rules as are sometimes applied to statutes regulating the exercise of a right conferred by statute and in derogation of the common law.[21] But where

[18] Barden v. Crocker, 10 Pick. (Mass.) 383. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 10; "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[19] President, etc., of Washington & B. Turnpike Road v. State, 19 Md. 239; People v. Directors, etc., of Bristol & R. Turnpike Road, 23 Wend. (N. Y.) 222, 244. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 10; "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[20] Proprietors of Sudbury Meadows v. Proprietors of Middlesex Canal, 23 Pick. (Mass.) 36; Dodge v. County Com'rs of Essex, 3 Metc. (Mass.) 380; Elder v. Bemis, 2 Metc. (Mass.) 599. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 10; "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[21] Avery v. Town of Groton, 36 Conn. 304. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 10; "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

a statute provides a remedy unknown to the common law, and by which no personal notice to the person proceeded against is required, it should, for obvious reasons, be strictly construed.[22]

STATUTES SUPERSEDING COMMON LAW

112. The common law gives way to a statute which is inconsistent with it; and when a statute is designed as a revision, consolidation, or codification of the whole body of the law applicable to a given subject, it supersedes the common law so far as it applies to that subject, and leaves no part of it in force.

"Where the common law and a statute differ, the common law gives place to the statute, and an old statute gives place to a new one; and this upon a general principle of universal law, that 'leges posteriores priores contrarias abrogant.'" [23] Although an immemorial custom may override or control the common law, yet both must give way to a statute introducing a new principle and a new rule sufficient of itself.[24] Consequently, when it is evident that a statute, or a code or revision of the laws, is not intended merely to be cumulative, or to remedy the defects of the common law, but designed as a complete and comprehensive body of law in relation to a given subject, enacting or consolidating all the laws, new or old, which are for the future to govern the legal aspects of that subject, it supersedes the common law entirely, as to that subject, and

[22] Souter v. The Sea Witch, 1 Cal. 162. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 10; "Statutes," Dec. Dig. (Key No.) § 222; Cent. Dig. § 301.*

[23] 1 Bl. Comm. 89; State v. Norton, 23 N. J. Law, 33; State v. Boogher, 71 Mo. 631. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[24] Delaplane v. Crenshaw, 15 Grat. (Va.) 457. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

leaves no part or branch of it to be governed or determined by the common law.[25] The theory of this rule is well explained by the Supreme Court of Alabama, where, in speaking of the Revised Code of that state, it is said that it "is intended to contain all the statute law of the state of a public nature, designed to operate upon all the people of the state, up to the date of its adoption, unless otherwise directed in the Code. This law is not merely cumulative of the common law, and made to perfect the deficiencies of that system, but it is designed to create a new and independent system, applicable to our own institutions and government. In such case, where a statute disposes of the whole subject of legislation, it is the only law. Otherwise we shall have two systems, where one only was intended to operate, and the statute becomes the law only so far as a party may choose to follow it. Besides, the mere fact that a statute is made shows that, so far as it goes, the legislature intended to displace the old rule by a new one. On some questions, the common law conflicts more or less with our constitutional law and is necessarily displaced and repealed by it; and on others, it has, by the lapse of ages, and mistakes inevitably attendant on all human affairs, become uncertain and difficult to reconcile with the principles of justice. Hence the legislature intervenes to remove such difficulties, uncertainties, and mistakes, by a new law. This new law, to the extent that it goes, necessarily takes the place of all others. It would be illogical to contend that the old rule must stand, as well as the new one, because this would not remedy the evil sought to be removed and avoided." [26]

[25] Hannon v. Madden, 10 Bush (Ky.) 664; Kramer v. Rebman, 9 Iowa, 114; Commonwealth v. Cooley, 10 Pick. (Mass.) 37; State v. Wilson, 43 N. H. 415, 82 Am. Dec. 163; State v. Dalton & Fay, 134 Mo. App. 517, 114 S. W. 1132; Rio Grande Western Ry. Co. v. Salt Lake Inv. Co., 35 Utah, 528, 101 Pac. 586. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[26] Barker v. Bell, 46 Ala. 216. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

STATUTES IN DEROGATION OF COMMON LAW

113. It is a rule generally observed (except where prohibited by statute) that acts of the legislature made in derogation of the common law will not be extended by construction; that is, the legislature will not be presumed to intend innovations upon the common law, and its enactments will not be extended, in directions contrary to the common law, further than is indicated by the express terms of the law or by fair and reasonable implications from its nature or purpose or the language employed.

It was formerly accepted, by all the courts, as a rule of universal applicability, that all statutes made in derogation of the common law were to be strictly construed.[27] And this doctrine is still frequently enunciated, and is more or less rigorously adhered to in even some of the most recent decisions.[28]

[27] Melody v. Reab, 4 Mass. 471; Esterley's Appeal, 54 Pa. 192; Bailey v. Bryan, 48 N. C. 357, 67 Am. Dec. 246; Hellman v. Bennett, 44 Miss. 322; Arthur's Appeal, 1 Grant, Cas. (Pa.) 55; Gavin v. Shuman, 23 Ind. 32; Wright v. Millard, 3 G. Greene (Iowa) 86; Gibbons v. The Fanny Barker, 40 Mo. 253; Dwelly v. Dwelly, 46 Me. 377. But as early as 1818 the court in Massachusetts declared that, while statutes made in derogation of the common law were to be construed strictly, yet they were also to be construed sensibly, and with a view to the object aimed at by the legislature. Gibson v. Jenney, 15 Mass. 205. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[28] McNemar v. Cohn, 115 Ill. App. 31; Thornburg v. American Strawboard Co., 141 Ind. 443, 40 N. E. 1062, 50 Am. St. Rep. 334; Hamilton v. Jones, 125 Ind. 176, 25 N. E. 192; Hare v. McIntire, 82 Me. 240, 19 Atl. 453, 8 L. R. A. 450, 17 Am. St. Rep. 476; Maryland & P. R. Co. v. Silver, 110 Md. 510, 73 Atl. 297; Howes v. Newcomb, 146 Mass. 76, 15 N. E. 123; Sarazin v. Union R. Co., 153 Mo. 479, 55 S. W. 92; State v. Dalton & Fay, 134 Mo. App. 517, 114 S. W. 1132; Perry v. Strawbridge, 209 Mo. 621, 108 S. W. 641, 16 L. R. A. (N. S.) 244, 123 Am. St. Rep. 510; Carley v. Liberty Hat Mfg. Co. (N. J. Sup.) 75 Atl. 543; Dean v. Metropolitan El. Ry. Co., 119 N. Y. 540, 23 N. E. 1054; Kellar v. James, 63 W. Va. 139, 59 S. E. 939, 14

This rule often led to hardship and injustice in individual cases, and by means of it the beneficent and progressive purposes of the legislative bodies were frequently balked. But for ages no one thought of questioning its propriety or validity. The rule owes its being to the great regard which was formerly entertained for the system of the common law. "To understand the meaning and present value of the rule that statutes in derogation of the common law are to be strictly construed, we must keep in mind the feelings of our ancestors in regard to that system of jurisprudence. They invariably spoke of it with a reverential awe, blended with a tender attachment." [29] "This has been the language of the courts," says Kent, "in every age; and when we consider the constant, vehement, and exalted eulogy which the ancient sages bestowed upon the common law as the perfection of reason, and the best birthright and noblest inheritance of the subject, we cannot be surprised at the great sanction given to this rule of construction." [30] The judges, in particular, manifested an enthusiastic devotion to the common law, which, it must be remembered, was very largely their own creation, and were prone to regard the interference of Parliament, by way of abrogating or modifying its rules, with jealousy and distrust. It was therefore quite natural that they should set up for themselves a rule that all statutes which derogated from the force or applicability of their idolized system should be subjected to a strict interpretation. We shall presently endeavor to show that this rule no longer has any foundation in reason, and that it should be very considerably modified before it is justly applicable to the enactments of our legislative bodies. But before doing so it will be useful to adduce some illustrations to show the meaning of the rule and its application

L. R. A. (N. S.) 1003; Northern Cent. Ry. Co. v. Green, 112 Md. 487, 76 Atl. 90; Thomas v. Maloney, 142 Mo. App. 193, 126 S. W. 522. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[29] Sedgwick, Stat. Constr. (2d Ed.) 273. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[30] 1 Kent, Comm. 464.

in practice. It has been said, for example, that where a statute abrogates a common-law right or confers a right not vested by the common law, it should not be so construed as to go beyond the letter, nor even to that extent, unless it appears to accord with the spirit and intent of the act.[31] Again, an act conferring summary jurisdiction or authorizing summary proceedings is very much out of the course of the common law, and ought to be strictly construed.[32] Thus, an act which gives a remedy by motion against public officers on their official bonds is in derogation of the common law.[33] So, also, statutes exempting portions of a debtor's property from liability for his debts are in derogation of the common law, and are not to be extended by an equitable construction.[34] Again, the power to take lands of private owners for public purposes is considered in derogation of that system of law, and hence to be strictly construed.[35] A statute which grants to a city rights and powers unknown to the common law, as the

[31] Dewey v. Goodenough, 56 Barb. (N. Y.) 54. But see Loewy v. Gordon, 129 App. Div. 459, 114 N. Y. Supp. 211, holding that, when a statute giving a privilege unknown to the common law, or enlarging a privilege, authorizes something to be done as therein provided, it impliedly forbids it to be done in any other way, even though that other way should be better. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[32] McMullin v. McCreary, 54 Pa. 230; Smith v. Moffat, 1 Barb. (N. Y.) 65; Looker v. Halcomb, 4 Bing. 183. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[33] Hearn v. Ewin, 3 Cold. (Tenn.) 399. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[34] Rue v. Alter, 5 Denio (N. Y.) 119; Charless v. Lamberson, 1 Iowa, 435, 63 Am. Dec. 457. But see Howard v. Williams, 2 Pick. (Mass.) 80. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[35] Sharpe v. Speir, 4 Hill (N. Y.) 76. And see Harvey v. Aurora & G. R. Co., 174 Ill. 295, 51 N. E. 163; Chesapeake & O. R. Co. v. Walker, 100 Va. 69, 40 S. E. 633; People ex rel. Washburn v. Common Council, etc., of City of Gloversville, 128 App. Div. 44, 112 N. Y. Supp. 387; Johnson City Southern R. Co. v. South & W. R. Co., 148 N. C. 59, 61 S. E. 683; Puyallup v. Lacey, 43 Wash. 110, 86

power to donate the corporate funds in aid of a railroad, should be strictly construed.[36] And a statute allowing persons to testify in their own cases, being in derogation of the common law, should be subjected to a strict interpretation.[37] So, also, "although it is competent to the legislature to alter the rules of evidence so as to compel a party to give testimony against himself, it is nevertheless a power of such transcendent and overwhelming importance that a just regard for the liberties of the citizen should at all times induce the most cautious and jealous exercise of it by the legislature; and especially should courts of justice anxiously and narrowly watch it, and never, under any pretense whatever, extend it beyond the limits to which the strictest interpretation of the language of the legislature confines it in a particular case." [38] So the West Virginia statute known as the "suitors' test-oath" act—providing that if a plaintiff would not take and file an oath of expurgation (an oath asserting his loyalty to the rightful government and his freedom from any participation in the rebellion) in the cases where such oath was required by the act, his suit should be dismissed—was held to be in derogation of the common law, and for that reason not to be extended beyond its express terms.[39] Undoubtedly, many of the foregoing cases were correctly decided; that is, it was right that the statutes severally before the courts in those cases should be subjected to a strict interpretation. But there was ample reason, in each case, for adopting such a con-

Pac. 215. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[36] Indiana N. & S. Ry. Co. v. City of Attica, 56 Ind. 476. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[37] Hotaling v. Cronise, 2 Cal. 60; Warner v. Fowler, 8 Md. 25. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[38] Broadbent v. State, 7 Md. 416. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[39] Harrison v. Leach, 4 W. Va. 383. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

struction, without any reference to the effect of the statute upon the common law.

In fact, as we have already stated, this rule is no longer supported by reason. "It is difficult," says Sedgwick, "if not impossible, now to understand this enthusiastic loyalty to a body of law, the most peculiar features of which the activity of the present generation has been largely occupied in uprooting and destroying." [40] American courts have no reason to attach any peculiar sanctity to the common law. Nor is there any reason why a statute abrogating the common law should be any more strictly construed than a statute abrogating another act of the same legislature. On this point we quote from an eminent authority as follows: "It would seem that modern courts and judges have repeated the rule without any knowledge of its origin and without any thought of the enormous changes in the relations between the courts and the legislature which have taken place since the rule was promulgated. In fact, the reason of the rule, or rather the occasion of it, for there never was any reason for it, has entirely passed away. It is a demonstrable proposition that there is hardly a rule or doctrine of positive practical jurisprudence in England or in the United States to-day which is not the result, in part at least, of legislation; hardly a rule or doctrine of the original common law which has not been abrogated, or changed, or modified by statute. Furthermore, it is conceded that the ancient conception as to the perfection of the common law was absurdly untrue. The great mass of its practical rules as to property, as to persons, as to obligations, and as to remedies, were arbitrary, unjust, cumbersome, and barbarous. For the last generation, the English Parliament and our state legislatures have been busy in abolishing these common-law rules and in substituting new ones by means of statutes. That all this remedial work, all this benign and necessary legislative endeavor to create a jurisprudence scientific in form and adapted to the

[40] Sedgwick, Stat. Constr. (2d Ed.) 273. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

wants of the age, should be hampered, and sometimes thwarted, by a parrot-like repetition and unreflecting application of the old judicial maxim that statutes in derogation of the common law are to be strictly construed is, to say the least, absurd." [41]

It has been said that a reason for this rule may still be found in the fact that the common law found its most worthy expression in the safeguards which it threw around the rights of the individual, both in respect to its immediate protection to life, liberty, and property, and in respect to the rules and principles of procedure which it devised with a view to the protection of those rights. But all the rights of persons which it is the duty of a free government to preserve and protect have been adequately guaranteed in our constitutions, national and state. Any legislative enactment encroaching upon them to an extent deemed incompatible with the fullest measure of liberty which a republican government can secure will be annulled by the decisions of the courts, not with any reference to the common law, but because it is unconstitutional. And even where the

[41] From Prof. Pomeroy's note in Sedgwick, Stat. Constr. (2d Ed.) 270, 271. And see Caspar v. Lewin, 82 Kan. 604, 109 Pac. 657, in which it was held that, under the Kansas "Factory Act," the defense of contributory negligence could not be set up in an action for damages by an injured employé. The court pointed out that, while the environment of the factory operative, and all the conditions surrounding him, had been completely changed by the introduction of modern machinery, his common-law rights and remedies remained unchanged, except in so far as altered by modern statutes regulating the relations of employer and employé. The court further remarked that even the most radical factory acts were sometimes construed in such a manner as to effect no beneficent change in the law, or were subjected to a strict interpretation because in derogation of the common law, but the court refused to take such a view of the statute before it. It was said: "The court cannot abolish the old rules and adopt others which shall suit existing facts and remedy existing evils. That must be done by the legislature. But when tardy statutes are promulgated the courts should interpret them as favorably as their terms will allow, and not proceed to shackle them with the discredited common-law manacles." *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

express provisions of the constitution may not enter into the question, a statute infringing upon the just rights of the citizen, either in substance or in matters of procedure, would be subjected to a strict construction, in virtue of certain other rules of interpretation, which will be noticed in a subsequent chapter, and which, unlike the rule now under consideration, rest upon a solid and substantial basis of reason.

In many of the states, this rule has been abolished by statute. Thus, the Civil Code of California provides that "the rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this state respecting the subjects to which it relates, and its provisions are to be liberally construed, with a view to effect its objects and to promote justice." [42] And in other states, a tendency is observable to restrict and modify the rule very greatly before it is considered applicable to modern statutory enactments. As adopted and approved by the best authorities, it may now be stated as follows: Statutes in modification or derogation of the common law will not be presumed to alter it further than is expressly declared, or further than may be fairly and reasonably inferred from the purpose and nature of the statute or from the language employed in it. Such acts will be liberally construed, if their nature is remedial, but their operation will not be extended by a forced construction. The presumption is that the

[42] Civ. Code, § 4. And see Code Civ. Proc. N. Y. § 3345; Rev. St. Ohio, 1908, § 4948; Code Civ. Proc. Mont. 1895, § 3453; McClain's Code Iowa, § 3733; Gen. St. Kan. 1889, par. 7281; Code Civ. Proc. Neb. § 1; Bullitt's Civ. Code Ky. § 733; Civ. Code Prac. Ark. 1894, § 7222; Civ. Code Colo. § 443; Code Civ. Proc. S. C. 1902, § 448; 2 Hill's Ann. St. & Codes Wash. § 1707; Code Civ. Proc. Idaho, § 3; Rev. St. Wyo. 1887, § 2338; Darby v. Heagerty, 2 Idaho (Hasb.) 282, 13 Pac. 85; In re Garr's Estate, 31 Utah, 57, 86 Pac. 757; Sutton v. Sutton, 87 Ky. 216, 8 S. W. 337, 10 Ky. Law Rep. 136, 12 Am. St. Rep. 476; Dillehay v. Hickey, 71 S. W. 1, 24 Ky. Law Rep. 1220; Berry v. Powell, 47 Tex. Civ. App. 599, 105 S. W. 345; Galveston, H. & S. A. Ry. Co. v. Walker, 48 Tex. Civ. App. 52, 106 S. W. 705. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

terms of the statute disclose the extent of the alteration or change it was designed to effect.[43] The whole tendency of modern statutory construction, it should be observed, is to escape from the domination of fixed and unalterable rules, which often are arbitrary and tend only to becloud justice, and to seek, first and always, the actual intention and meaning of the legislature. "It is said," observes the court in Massachusetts, "that statutes made in derogation of the common law are to be strictly construed. This is true; but they are also to be construed sensibly, and with a view to the object aimed at by the legislature." [44] Statutes derogating from the common law cannot, therefore, be properly extended by construction so as to embrace cases not fairly within the scope of the language used.[45] Thus, a charge

[43] Shaw v. Railroad Co., 101 U. S. 557, 25 L. Ed. 892; Cook v. Meyer, 73 Ala. 580; McCarthy v. McCarthy, 20 App. D. C. 195; Davis v. Abstract Const. Co., 121 Ill. App. 121; Brown v. Rouse, 116 Ill. App. 513; Chicago, W. & V. Coal Co. v. People, 114 Ill. App. 75; Kalfus v. Kalfus, 12 Ky. Law Rep. 739; Wilbur v. Crane, 13 Pick. (Mass.) 284; Commonwealth v. Rumford Chemical Works, 16 Gray (Mass.) 231; Bandfield v. Bandfield, 117 Mich. 80, 75 N. W. 287, 40 L. R. A. 757, 72 Am. St. Rep. 550; Sullivan v. La Crosse & M. Steam Packet Co., 10 Minn. 386 (Gil. 308); State v. Dalton & Fay, 134 Mo. App. 517, 114 S. W. 1132; Rozelle v. Harmon, 103 Mo. 339, 15 S. W. 432, 12 L. R. A. 187; Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245, 86 N. Y. Supp. 49; Keim v. City of Reading, 32 Pa. Super. Ct. 613; State v. Shapiro, 29 R. I. 133, 69 Atl. 340; Langlois v. Dunn Worsted Mills, 25 R. I. 645, 57 Atl. 910; State v. Cooper, 120 Tenn. 549, 113 S. W. 1048; State v. Hildreth, 82 Vt. 382, 74 Atl. 71, 24 L. R. A. (N. S.) 551; Northern Cent. Ry. Co. v. Green, 112 Md. 487, 76 Atl. 90; Coal & Coke Ry. Co. v. Conley (W. Va.) 67 S. E. 613; State v. Central Vermont R. Co., 81 Vt. 459, 71 Atl. 193, 21 L. R. A. (N. S.) 949; Norfolk & W. Ry. Co. v. Virginian Ry. Co., 110 Va. 631, 66 S. E. 863; Millhiser Mfg. Co. v. Gallego Mills Co., 101 Va. 579, 44 S. E. 760. But see In re Lord & Polk Chemical Co., 7 Del. Ch. 248, 44 Atl. 775, holding that, where a statute undertakes to regulate the conduct of a matter covered by the common law, and omits parts of it, the omission will be taken as an intention to repeal or abrogate it. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[44] Gibson v. Jenney, 15 Mass. 205. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[45] Dwelly v. Dwelly, 46 Me. 377. *See "Common Law," Dec. Dig.*

created by statute on property, as, a landlord's lien on the tenant's crops, will not, unless it is clearly expressed or justly implied, be construed to have a superiority which the common law does not attach to similar charges.[46] There are also numerous cases of statutes which might come under the influence of this rule, but which are also within the equally well settled rule that remedial statutes are to be liberally construed. For instance, an act of the legislature dispensing with the necessity of a seal and giving effect to instruments in writing according to the intention of the grantor, is remedial in its character, and hence should be liberally construed, in order to suppress the mischief intended to be remedied and to effectuate the purpose and intent of the law-makers; but the courts also hold that such a law, being in derogation of the common law, should not be extended by construction in respect to its operation.[47] Where a statute is equally susceptible of two constructions, one of which is in harmony with a settled principle of the common law, and the other in derogation of it, the courts will adopt the former.[48] But some of the courts, breaking away from the artificial control of this rule, have established a principle which is much more in accordance with modern conditions and modern needs. They hold that a statute which is penal in its nature and in derogation of some right existing at common law should not be extended by construction beyond its natural meaning;[49] but that, if these

(Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.

[46] Scaife v. Stovall, 67 Ala. 237. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[47] Webb v. Mullins, 78 Ala. 111. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[48] Ryan v. Couch, 66 Ala. 244. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[49] Gunter v. Leckey, 30 Ala. 591. And see McInnis v. State (Miss.) 52 South. 634, holding that a criminal statute in derogation of the common law must be strictly construed in favor of the accused. *See*

conditions do not exist, they are not bound to put a strict construction upon any law merely because it conflicts with the previously existing common law. For example, an act of Congress passed in 1851, entitled "An act to limit the liability of shipowners," declares that such owners shall not be liable for loss or damage "which may happen to any goods or merchandise which shall be shipped, taken in, or put on board any such ship or vessel, by reason or by means of any fire happening to or on board the said ship or vessel, unless such fire is caused by the design or neglect of such owner." It is held that although this statute changes the rule of the common law, it is not a penal statute, nor in derogation of natural right, so as to require a strict interpretation. It was enacted to modify the extreme rigor of the common law, and is therefore a remedial act. Hence it should be construed, if not liberally, at least fairly, to carry out the policy which it was enacted to promote; and for this reason, the broad terms "any goods or merchandise" must be held to include the ordinary baggage of passengers.[50]

This modification of the ancient rule simply places the common law on a level with the pre-existing statutory law of the state. As we have explained in an earlier chapter of this work, there is always a presumption against an intent to change the existing law; and this presumption applies as well to the common law as to earlier statutes. To this extent, and only to this extent, the rule we are considering may be allowed a place and a value. And an attentive examination of the cases in which the stricter form of the rule has been appealed to as justifying the courts in putting a restrictive interpretation upon the statutes before them will generally show that the real reason for such an interpretation lay in the nature of the act itself, and not

"Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.

[50] Chamberlain v. Western Transp. Co., 44 N. Y. 305, 4 Am. Rep. 681. And see The Warkworth, L. R. 9 P. Div. 20. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

in any necessity of observing respect for the common law. For example, the statutes authorizing the seizure and sale of land for the nonpayment of taxes are usually subjected to a strict construction. That they are in derogation of the common law has nothing to do with the case, although that consideration is often put forward as the reason for giving them such an interpretation.[51] The true reason is that such laws put the citizen to the danger of being deprived of his property without a judicial investigation, and invest administrative officers with a power to sell and dispose of what they do not own.

Married Women's Property Acts

A good illustration of the mistaken application of the rule requiring the strict construction of statutes in derogation of the common law, and of the way in which the progress of the law has been hampered by the rule, is found in the case of the statutes enabling married women to deal freely with their separate property and to make contracts respecting the same. In this regard the common law was harsh and unjust. Moreover, it had become utterly unsuited to the modern conditions of life and the modern progress of ideas. Yet when the legislatures began to take steps for the enfranchisement of the feme covert, the courts quite generally held that these remedial and beneficent statutes, because they were in derogation of the common law, must be subjected to a strict construction, and the same rule is laid down in some quite recent cases.[52] In some instances, these decisions were afterwards overruled.[53] In

[51] See, for example, Sibley v. Smith, 2 Mich. 486; Newell v. Wheeler, 48 N. Y. 486; Dequasie v. Harris, 16 W. Va. 345. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[52] Brown v. Fifield, 4 Mich. 322; Graham v. Van Wyck, 14 Barb. (N. Y.) 531; Perkins v. Perkins, 62 Barb. (N. Y.) 531; Fitzgerald v. Quann, 109 N. Y. 441, 17 N. E. 354; Bertles v. Nunan, 92 N. Y. 152, 44 Am. Rep. 361; Compton v. Pierson, 28 N. J. Eq. 229; Thompson v. Weller, 85 Ill. 197. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[53] For instance, De Vries v. Conklin, 22 Mich. 255, holds that a

many more, it was necessary for the legislature to counteract their effects by additional legislation, extending still further the liberal features of this class of laws. In some cases the courts have applied to such statutes the modified form of the rule of which we have spoken above. Thus, the Supreme Court of Indiana, speaking of such an act, says: "While the provisions of the act must be liberally construed, according to their true intent and meaning, yet, as they are in derogation of the common-law rule, they are not to be enlarged by construction beyond the plain meaning of the language used by the law-making power in their enactment." [54]

Mechanics' Lien Laws

A similar conflict of authority has attended the construction of the statutes creating mechanics' liens and providing for their enforcement. Many of the courts have held that these laws are to be construed strictly, because they are in derogation of the common law.[55] "This court has repeatedly declared in substance that these acts are innovations upon the common law over rights of property, by permitting the institution of private charges on property without or against the owner's assent, and without any judicial or other official sanction, and by authorizing an enforcement of such charges by unusual and summary methods, and that the provisions of these enactments cannot be extended in their operation and effect beyond the plain and fair sense

statute empowering a married woman to deal freely with her separate property, as if she were sole, and to make contracts respecting it, is a remedial act, and is to be construed liberally to effectuate its purpose, thus overruling Brown v. Fifield, 4 Mich. 322. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[54] Haas v. Shaw, 91 Ind. 384, 46 Am. Rep. 607. And see Cook v. Meyer, 73 Ala. 580; Moore v. Cornell, 68 Pa. 320. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[55] Lynch v. Cronan, 6 Gray (Mass.) 531; Wade v. Reitz, 18 Ind. 307; Rothgerber v. Dupuy, 64 Ill. 452. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

of the terms, and that parties asserting liens or titles resting upon them must bring themselves and their titles plainly and distinctly within these terms, and affirmatively make out that a lien was originally effected regularly and thereafter kept up, and that every essential statutory step either in the creation, continuance, or enforcement of the lien has been duly taken." [56] But on the other hand, the courts in several of the other states have taken an exactly opposite view of these statutes. Thus, for example, the Supreme Court of Ohio says: "Looking thus at the object of the statute, and perceiving it to be one of an equitable character and beneficent tendency, section 7 being directory as to the mode of securing the object of the statute, the same ought to be liberally construed, for the furtherance and attainment of such object." [57]

[56] Wagar v. Briscoe, 38 Mich. 587. And see Chapin v. Persse & Brooks Paper Works, 30 Conn. 461, 79 Am. Dec. 263. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[57] Thomas v. Huesman, 10 Ohio St. 152. See, also, Oster v. Rabenau, 46 Mo. 595; Collins Granite Co. v. Devereux, 72 Me. 422; Barnes v. Thompson, 2 Swan (Tenn.) 313; Buchanan v. Smith, 43 Miss. 90; Minor v. Marshall, 6 N. M. 194, 27 Pac. 481. *See "Common Law," Dec. Dig. (Key No.) § 11; Cent. Dig. § 12; "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

CHAPTER X

RETROSPECTIVE INTERPRETATION

114. Definition.
115–116. Constitutional Considerations.
117. The General Rule.
118. Statutes Impairing Vested Rights.
119. Statutes Imposing Penalties and Liabilities.
120. Remedial Statutes.
121. Statutes Regulating Procedure.
122–123. Curative Statutes.
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DEFINITION

114. A retrospective law is one which looks backward or contemplates the past; one which is made to affect acts or transactions occurring before it came into effect, or rights already accrued, and which imparts to them characteristics, or ascribes to them effects, which were not inherent in their nature in the contemplation of the law as it stood at the time of their occurrence.

The foregoing definition is the one generally accepted by the courts as descriptive of a retrospective (or retroactive) law, in the wide and general sense of the term.[1] In discussions concerning the constitutional validity of particular statutes, however, and in relation to constitutional prohibitions against the enactment of retrospective laws generally, the term is taken in a somewhat narrower sense, and is applied to laws which take away or impair vested rights acquired under existing laws, or which impair the

[1] Keith v. Guedry (Tex. Civ. App.) 114 S. W. 392; State ex rel. American Savings Union v. Whittlesey, 17 Wash. 447, 50 Pac. 119; Merrill v. Sherburne, 1 N. H. 199, 8 Am. Dec. 52; Chicago, B. & Q. R. Co. v. State, 47 Neb. 549, 66 N. W. 624, 41 L. R. A. 481, 53 Am. St. Rep. 557; De Cordova v. City of Galveston, 4 Tex. 470. *See "Statutes," Dec. Dig. (Key No.) § 261; Cent. Dig. § 312; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

obligation of contracts, or which create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past.[2] Under either definition, retrospective interpretation of a statute is such as holds it to be applicable to, and determinative of, a transaction or a state of facts wholly completed before the date of its enactment; while prospective interpretation denies to the statute any applicability to such facts or transactions, and restricts its operation to such facts and causes as shall arise after its passage.

But a statute cannot properly be called retrospective merely because a part of the requisites for its operation may be drawn from a time antecedent to its passage,[3] nor because its operation may in a given case depend on an occurrence anterior to that date.[4] Thus, for example, an act is not retrospective which establishes the death of a husband or wife as the future event on which it is to operate, although, in the particular case, the relation of husband

[2] Sturges v. Carter, 114 U. S. 511, 5 Sup. Ct. 1014, 29 L. Ed. 240; Society for Propagation of the Gospel v. Wheeler, 2 Gall. 105, Fed. Cas. No. 13,156; Perry v. City of Denver, 27 Colo. 93, 59 Pac. 747; Deland v. Platte County (C. C.) 54 Fed. 823; Dodin v. Dodin, 17 Misc. Rep. 35, 40 N. Y. Supp. 748; Gaston v. Merriam, 33 Minn. 271, 22 N. W. 614; Bell v. Perkins, Peck (Tenn.) 261, 14 Am. Dec. 745; Rairden v. Holden, 15 Ohio St. 207; Commissioners of Hamilton County v. Rosche, 50 Ohio St. 103, 33 N. E. 408, 19 L. R. A. 584, 40 Am. St. Rep. 653; Leete v. State Bank of St. Louis, 115 Mo. 184, 21 S. W. 788; Simpson v. City Sav. Bank, 56 N. H. 466, 22 Am. Rep. 491. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[3] Queen v. Inhabitants of St. Mary, 12 Q. B. 120; McDougald v. New York Life Ins. Co., 146 Fed. 674, 77 C. C. A. 100; Chicago, B. & Q. R. Co. v. State, 47 Neb. 549, 66 N. W. 624, 41 L. R. A. 481, 53 Am. St. Rep. 557. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[4] In re Scott (D. C.) 126 Fed. 981; United States v. Trans-Missouri Freight Ass'n, 166 U. S. 290, 17 Sup. Ct. 540, 41 L. Ed. 1007; Tremont & Suffolk Mills v. City of Lowell, 165 Mass. 265, 42 N. E. 1134; Wade v. Drexel, 60 Minn. 164, 62 N. W. 261. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

and wife existed before the taking effect of the act.[5] Nor can this term be applied to a statute, though it acts on past transactions, or an existing state of facts, if it gives to persons concerned an opportunity to comply with its directions before its penalties attach.[6]

CONSTITUTIONAL CONSIDERATIONS

115. If a retrospective statute is in the nature of an ex post facto law or a bill of attainder, or if it impairs the obligation of contracts or divests vested rights, or if all retrospective laws are specifically forbidden by the constitution of the particular state, such an act will be unconstitutional and void, but not otherwise.

116. If giving to a statute a retrospective operation would make it conflict with the constitution, in one or other of the ways above mentioned, such a result will be avoided, if possible, by construction.

Bills of attainder and ex post facto laws are both specifically prohibited by the federal constitution. They are both included in the category of retrospective laws. A bill of attainder or an ex post facto law is always retrospective; but not all retrospective laws are bills of attainder or ex post facto laws. The latter terms, according to the familiar doctrine of constitutional law, relate only to the imposition of pains or penalties or the conduct of criminal trials.[7]

[5] Noel v. Ewing, 9 Ind. 37. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[6] State ex rel. Hickman v. Preferred Tontine Mercantile Co., 184 Mo. 160, 82 S. W. 1075. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[7] An ex post facto law is one which makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action; or which aggravates a crime, or makes it greater than it was when committed; or which changes the punishment and inflicts a greater punishment than the law annexed to the

Again, all laws which impair the obligation of contracts are retroactive. For if they related only to future contracts, they could not be said to have this effect, because contracts are made with reference to existing laws. Laws which have the effect of divesting vested rights are also of this character; for the phrase "vested right" implies something settled or accrued in the past, on which the new statute is to operate.[8] There are also numerous classes of retrospective laws which are constitutionally objectionable for the reason that they exceed the powers of the legislature or invade the province of one of the other departments of the government. But unless the law in question belongs to one of the classes mentioned above, or is open to some one of the objections described, the mere fact that it is retroactive in its operation will not suffice to justify the courts in declaring it unconstitutional, unless all laws of that charac-

crime when it was committed; or which alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender. An ex post facto law is necessarily, as the words imply, a retroactive law. If any law is intended to operate only upon future actions or future trials, it cannot be called ex post facto. And again, the term is restricted to penal and criminal proceedings which affect life or liberty or may impose punishments or forfeitures. It has no applicability to purely civil proceedings which affect private rights only, although such proceedings, for their retroactive effect, may be unlawful. See, generally, Calder v. Bull, 3 Dall. 390, 1 L. Ed. 648; Kring v. Missouri, 107 U. S. 221, 2 Sup. Ct. 443, 27 L. Ed. 506; Cummings v. Missouri, 4 Wall. 277, 18 L. Ed. 356; Ex parte Garland, 4 Wall. 333, 18 L. Ed. 366; Boston v. Cummins, 16 Ga. 102, 60 Am. Dec. 717; Watson v. Mercer, 8 Pet. 88, 8 L. Ed. 876; Baltimore & S. R. Co. v. Nesbit, 10 How. 395, 13 L. Ed. 469; Caldwell v. State, 55 Ala. 133; Hart v. State, 40 Ala. 32, 88 Am. Dec. 752. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[8] Bailes v. Daly, 146 Ala. 628, 40 South. 420; Martin v. Oskaloosa (Iowa) 99 N. W. 557; Porter v. Glenn, 87 Ill. App. 106; Gladney v. Sydnor, 172 Mo. 318, 72 S. W. 554, 60 L. R. A. 880, 95 Am. St. Rep. 517; Butte & B. Consol. Min. Co. v. Montana Ore Purchasing Co., 25 Mont. 41, 63 Pac. 825; Merchants' Bank of Danville v. Ballou, 98 Va. 112, 32 S. E. 481, 44 L. R. A. 306, 81 Am. St. Rep. 715. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

ter are prohibited by the constitution of the particular state.[9] No such prohibition is found in the federal constitution. If a state statute does not impair the obligation of contracts or partake of the nature of a bill of attainder or an ex post facto law, its retrospective character does not make it inconsistent with the national constitution.[10]

It will therefore be seen that the question of a retrospective interpretation and the question of constitutionality are not coincident. The primary question is as to the meaning and intention of the legislature. When the court is called upon to decide whether it was intended that a given statute should have a retroactive operation or not, the further question of its constitutional validity, conceding to it such operation, may or may not be involved. But when it is seen that the statute, if allowed to retroact, will impair the obligation of contracts, or violate the rule against ex post facto laws, or otherwise conflict with the constitution, then the alternative is between construing it as prospective only and adjudging it to be void. In that event, the courts will struggle hard against the necessity of putting a retrospective interpretation upon the law. We have already seen[11] that the courts are bound to presume all legislative enactments to be valid; that it is never to be presumed that the lawmaking authority has exceeded its rightful powers;

[9] Cahen v. Brewster, 203 U. S. 543, 27 Sup. Ct. 174, 51 L. Ed. 310; Orient Ins. Co. v. Daggs, 172 U. S. 557, 19 Sup. Ct. 281, 43 L. Ed. 552; Plummer v. Northern Pac. Ry. Co. (C. C.) 152 Fed. 206; Atwood v. Buckingham, 78 Conn. 423, 62 Atl. 616; Kiskaddon v. Dodds, 21 Pa. Super. Ct. 351; Whitlock v. Hawkins, 105 Va. 242, 53 S. E. 401; State ex rel. American Savings Union v. Whittlesey, 17 Wash. 447, 50 Pac. 119. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[10] Satterlee v. Matthewson, 2 Pet. 380, 7 L. Ed. 458; Reed v. Beall, 42 Miss. 472; Burwell v. Tullis, 12 Minn. 572 (Gil. 486); Smith v. Van Gilder, 26 Ark. 527; Weister v. Hade, 52 Pa. 474; Bay v. Gage, 36 Barb. (N. Y.) 447; People v. Board of Sup'rs of Ulster County, 63 Barb. (N. Y.) 83. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[11] Ante, p. 110.

and that any conflict between the statute and the constitution is to be avoided by construction, if that is possible. Hence if a retrospective interpretation would make the statute unconstitutional, the judges will not so interpret it unless the intention of the legislature in that regard has been expressed in terms so plain and unmistakable that there is no possibility of any choice of meanings. "Courts will not give to a law a retrospective operation, even where they might do so without violation of the constitution, unless the intention of the legislature is clearly expressed in favor of such retrospective operation. This rule applies with the greater force when, by giving the law such effect, a serious question would be raised as to the constitutionality of the act. Where a statute can, consistent with the rules of interpretation, be so construed as to harmonize with the constitution, such construction will be adopted by the courts, rather than one which will raise an apparent conflict between the law and the constitution." [12]

THE GENERAL RULE

117. Except in the case of remedial statutes and those which relate to procedure in the courts, it is a general rule that acts of the legislature will not be so construed as to make them operate retrospectively, unless the legislature has explicity declared its intention that they should so operate, or unless such intention appears by necessary implications from the nature and words of the act so clearly as to leave no room for a reasonable doubt on the subject.[13]

[12] Town of La Salle v. Blanchard, 1 Ill. App. 635; Stein v. Hanson, 99 Minn. 387, 109 N. W. 821; Supreme Council of Royal Arcanum v. Heitzman, 140 Mo. App. 105, 120 S. W. 628; In re Richmond's Estate, 9 Cal. App. 402, 99 Pac. 554; Anheuser-Busch Brewing Ass'n v. Bond, 66 Fed. 653, 13 C. C. A. 665; Walker v. State, 46 Neb. 25, 64 N. W. 357. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[13] *United States.* Wrightman v. Boone County, 88 Fed. 435, 31 C. C. A. 570; United States v. Jackson, 143 Fed. 783, 75 C. C.

The reason for this rule is the general tendency to regard retrospective laws as dangerous to liberty and private rights, on account of their liability to unsettle vested rights

A. 41; United States v. Atchison, T. & S. F. R. Co. (C. C.) 142 Fed. 176; Jasper v. United States, 43 Ct. Cl. 368; Rich v. United States, 33 Ct. Cl. 191; Warren Mfg. Co. v. Etna Ins. Co., 2 Paine, 501, Fed. Cas. No. 17,206; United States v. Starr, Hempst. 469, Fed. Cas. No. 16,379; Costin v. Corporation of Washington, 2 Cranch, C. C. 254, Fed. Cas. No. 3,266. *Alabama.* Leahart v. Deedmeyer, 158 Ala. 295, 48 South. 371; Englehardt v. State, 88 Ala. 100, 7 South. 154; Barnes v. Mayor, etc., of Mobile, 19 Ala. 707. *Arizona.* Cummings v. Rosenberg, 100 Pac. 810. *Arkansas.* State v. Wallis, 57 Ark. 64, 20 S. W. 811. *Colorado.* City of Colorado Springs v. Neville, 42 Colo. 219, 93 Pac. 1096; Edelstein v. Carlile, 33 Colo. 54, 78 Pac. 680. *District of Columbia.* De Ferranti v. Lyndmark, 30 App. D. C. 417; Brown v. Grand Fountain of the United Order of True Reformers, 28 App. D. C. 200; Ohio Nat. Bank v. Berlin, 26 App. D. C. 218. *Illinois.* Bauer Grocery Co. v. Zelle, 172 Ill. 407, 50 N. E. 238; Cleary v. Hoobler, 207 Ill. 97, 69 N. E. 967; Porter v. Glenn, 87 Ill. App. 106; Halpin v. Prosperity Loan & Building Ass'n, 108 Ill. App. 316; People v. Lower, 236 Ill. 608, 86 N. E. 577; People v. Gage, 233 Ill. 447, 84 N. E. 616; O'Donnell v. Healy, 134 Ill. App. 187; Brennan v. Electrical Installation Co., 120 Ill. App. 461; Aultman & Taylor Machinery Co. v. Fish, 120 Ill. App. 314; Guard ex dem. Robinson v. Rowan, 3 Ill. 499; Jimison v. Adams County, 130 Ill. 558, 22 N. E. 829; Bruce v. Schuyler, 9 Ill. 221, 46 Am. Dec. 447. *Indiana.* Board of Com'rs of Morgan County v. Pritchett, 85 Ind. 68; City of Connersville v. Connersville Hydraulic Co., 86 Ind. 184; Maxwell v. Board of Com'rs of Fulton County, 119 Ind. 20, 19 N. E. 617; Aurora & L. Turnpike Co. v. Holthouse, 7 Ind. 59; Hopkins v. Jones, 22 Ind. 310; Pritchard v. Spencer, 2 Ind. 486. *Kansas.* Board of Com'rs of Douglass County v. Woodward, 73 Kan. 238, 84 Pac. 1028. *Kentucky.* Lawrence v. City of Louisville, 96 Ky. 595, 29 S. W. 450, 27 L. R. A. 560, 49 Am. St. Rep. 309; Louisville & N. R. Co. v. Mottley, 133 Ky. 652, 118 S. W. 982; Long v City of Louisville, 97 Ky. 364, 30 S. W. 987. *Louisiana.* Cassard v. Tracy, 52 La. Ann. 835, 27 South. 368, 49 L. R. A. 272; McGeehan v. Burke, 37 La. Ann. 156; Saunders v. Carroll, 12 La. Ann. 793. *Maine.* In re Pope's Estate, 103 Me. 382, 69 Atl. 616; Carr v. Judkins, 102 Me. 506, 67 Atl. 569; Dyer v. City of Belfast, 88 Me. 140, 33 Atl. 790; Hastings v. Lane, 15 Me. 134; Torrey v. Corliss, 33 Me. 333; Appeal of Deake, 80 Me. 50, 12 Atl. 790. *Massachusetts.* City of Haverhill v. City of Marlborough, 187 Mass. 150, 72 N. E. 943; Commonwealth v. Inhabitants of Sudbury, 106 Mass. 268; Whitman v. Hapgood, 10 Mass. 437; Inhabitants of Somerset v. Inhabitants of Dighton, 12 Mass. 383; Inhabitants of Medford v. Learned, 16

or disturb the legal effect of prior transactions. "Retrospective laws being in their nature odious, it ought never to be presumed the legislature intended to pass them,

Mass. 215; Garfield v. Bemis, 2 Allen, 445. *Michigan.* In re Lambrecht, 137 Mich. 450, 100 N. W. 606; Phillips v. Township of New Buffalo, 68 Mich. 217, 35 N. W. 918; Maxwell v. Bay City Bridge Co., 46 Mich. 278, 9 N. W. 410; Board of Sup'rs of Arenac County v. Board of Sup'rs of Iosco County, 158 Mich. 344, 122 N. W. 629; Smith v. Humphrey, 20 Mich. 398. *Minnesota.* State v. Hill, 32 Minn. 275, 20 N. W. 196; Brown v. Hughes, 89 Minn. 150, 94 N. W. 438. *Mississippi.* Brown v. Wilcox, 14 Smedes & M. 127; Hooker v. Hooker, 10 Smedes & M. 599; Garrett v. Beaumont, 24 Miss. 377. *Missouri.* State ex rel. Martin v. Wofford, 121 Mo. 61, 25 S. W. 851; Jamison v. Zausch, 227 Mo. 406, 126 S. W. 1023; State ex rel. Scott v. Dirckx, 211 Mo. 568, 111 S. W. 1; State ex rel. City of Moberly v. Ferguson, 62 Mo. 77; State ex rel. Blakeman v. Hays, 52 Mo. 578; State ex rel. Parker v. Thompson, 41 Mo. 25. *New Hampshire.* McMillan v. Noyes, 75 N. H. 258, 72 Atl. 759. *New Jersey.* Williams v. Brokaw, 74 N. J. Eq. 561, 70 Atl. 665; Allen v. Com'rs of Taxation for Bernards Tp., 57 N. J. Law, 303, 31 Atl. 219; Frelinghuysen v. Town of Morristown, 77 N. J. Law, 493, 72 Atl. 2; Citizens' Gaslight Co. v. Alden, 44 N. J. Law, 648; Warshung v. Hunt, 47 N. J. Law, 256; State ex rel. Baker v. Scudder, 32 N. J. Law, 203. *New York.* People v. Board of Sup'rs of Columbia County, 43 N. Y. 130; Wade v. Strack, 1 Hun, 96; Wood v. Oakley, 11 Paige, 400; Rhodes v. Sperry & Hutchinson Co., 193 N. Y. 223, 85 N. E. 1097, 127 Am. St. Rep. 945. *North Carolina.* State v. Pridgen, 151 N. C. 651, 65 S. E. 617. *North Dakota.* Adams & Freese Co. v. Kenoyer, 17 N. D. 302, 116 N. W. 98. 16 L. R. A. (N. S.) 681. *Oklahoma.* Anderson v. Ritterbusch, 22 Okl. 761, 98 Pac. 1002. *Pennsylvania.* Taylor v. Mitchell, 57 Pa. 209; Dewart v. Purdy, 29 Pa. 113; Becker's Appeal, 27 Pa. 52; Horn & Brannen Mfg. Co. v. Steelman, 215 Pa. 187, 64 Atl. 409; Martin v. Greenwood, 27 Pa. Super. Ct. 245; Barnesboro Borough v. Speice, 40 Pa. Super. Ct. 609; Smith v. Illinois Cent. R. Co., 36 Pa. Super. Ct. 584. *South Carolina.* Ex parte Graham, 13 Rich. Law, 277; Mutual Aid, Loan & Investment Co. v. Logan, 55 S. C. 295, 33 S. E. 372. *South Dakota.* American Inv. Co. of Emmetsburg v. Thayer, 7 S. D. 72, 63 N. W. 233. *Tennessee.* Dugger v. Mechanics' & Traders' Ins. Co., 95 Tenn. 245, 32 S. W. 5, 28 L. R. A. 796. *Texas.* Texas & N. O. R. Co. v. Wells-Fargo Express Co., 101 Tex. 564, 110 S. W. 38. *Virginia.* Burton v. Frank A. Seifert Plastic Relief Co., 108 Va. 338, 61 S. E. 933; Campbell v. Nonpareil Fire Brick & Kaolin Co., 75 Va. 291; Crigler's Committee v. Alexander's Ex'r, 33 Grat. 674; Brown's Committee v. Western State Hospital, 110 Va. 321, 66 S. E. 48; Swift & Co. v. City of Newport News, 105 Va. 108, 52 S. E. 821, 3 L. R. A. (N. S.)

where the words will admit of any other meaning." [14] "Legislation of this character is exceedingly liable to abuse, and it is a sound rule of construction that a statute should have a prospective operation only, unless its terms show clearly a legislative intention that it should operate retrospectively." [15] While it is true, as stated in the preceding section, that many statutes would be unconstitutional if given a retrospective application, and that the endeavor will be made to avoid this effect by construction, yet the general rule now under consideration does not depend upon the question of constitutionality or unconstitutionality in the particular case. Independently of the organic law—that is, even in cases where a retrospective construction would not make the statute obnoxious to any constitutional provision—it will not be so construed, except in the case of a purely remedial law, unless the legislative intention in that regard is perfectly plain.[16]

404; Merchants' Bank of Danville v. Ballou, 98 Va. 112, 32 S. E. 481, 44 L. R. A. 306, 81 Am. St. Rep. 715; Duval v. Malone, 14 Grat. 24. *West Virginia.* Burns v. Hays, 44 W. Va. 503, 30 S. E. 101; Rogers v. Lynch, 44 W. Va. 94, 29 S. E. 507; Murdock v. Franklin Ins. Co., 33 W. Va. 407, 10 S. E. 777, 7 L. R. A. 572; Barker v. Hinton, 62 W. Va. 639, 59 S. E. 614. *Wisconsin.* Quinn v. Chicago, M. & St. P. Ry. Co., 141 Wis. 497, 124 N. W. 653; Finney v. Ackerman, 21 Wis. 268; Seamans v. Carter, 15 Wis. 548, 82 Am. Dec. 696. *England.* Moon v. Durden, 2 Exch. 22; Pardo v. Bingham, L. R. 4 Ch. App. 735; Queen v. Guardians of Ipswich Union, L. R. 2 Q. B. Div. 269; Gardner v. Lucas, L. R. 3 App. Cas. 582. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[14] Underwood v. Lilly, 10 Serg. & R. (Pa.) 97, 101. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377; "Constitutional Law," Dec. Dig. (Key No.) §§ 186–203; Cent. Dig. §§ 526–590.*

[15] Cooley, Const. Lim. 370. This rule against retroactive laws is not only of great antiquity and dignity in the English law, but is also recognized in various foreign systems. It was a part of the imperial Roman law. "Leges et constitutiones futuris certum est dare formam negotiis, non ad facta præterita revocari, nisi nominatim et de præterito tempore et adhuc pendentibus negotiis cautum sit." Codex, lib. I, tit. 14, § 7. So, also, the Civil Code of France, art. 2, provides "La loi ne dispose que pour l'avenir; elle n'a point d'effet retroactif."

[16] McFadden v. Blocker, 2 Ind. T. 260, 48 S. W. 1043, 58 L. R. A.

Generally, when the legislature designs that a statute shall operate upon past or present facts or transactions, as well as upon future transactions, its intention in that regard will be expressed by apt words. For example, a statute making certain provisions in relation to "all contracts which have been heretofore made or which shall be hereafter made" would be explicitly retroactive. So also would a law regulating the rights and duties of "all persons now or hereafter engaging in the business of common carriers." In a statute relating to judgments "rendered or to be rendered," the use of the word "rendered" demonstrates the legislative intention to make it operative upon judgments already entered when the statute was enacted.[17] On the other hand, the word "shall," as used in a statute, ordinarily applies only to something to be done or to take place in the future.[18] And a law forbidding certain action to be "hereafter" taken does not apply to any past transaction of that character.[19]

But the problem of interpretation is presented to the courts, and the rule we have cited is put into operation, in those cases where the language of the statute is so ambiguous or lacking in precision that it is doubtful whether it was designed to apply to future cases only or to include the past as well. It is said that, in the absence of any express declaration in the act, the question whether it is meant to be prospective or retrospective is one of construction upon the statute, considered per se and in connection with the subject-matter.[20] And the occasion of the enacting of the law

878; Knighton v. Burns, 10 Or. 549. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[17] Pauley Jail Bldg. & Mfg. Co. v. Crawford County, 84 Fed. 942, 28 C. C. A. 579. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[18] Minter v. Bradstreet Co., 174 Mo. 444, 73 S. W. 668. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[19] Northwestern Mut. Life Ins. Co. v. Seaman (C. C.) 80 Fed. 357. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[20] Bay v. Gage, 36 Barb. (N. Y.) 447. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

may be looked to, to assist in determining its character as retroactive or prospective.[21] It has also been laid down that when the legislature fixes a future day for the statute to go into effect, it thereby plainly shows that it is intended to be prospective only. Thus, for instance, in a case in Pennsylvania, the act made certain provisions for "cases of partition of real estate in any court wherein a valuation shall have been made of the whole or parts thereof." It was held that the words "shall have been made" referred only to valuations made after the date when the act was to take effect.[22] And so where the act provides for the giving of notice of injuries caused by defective highways, except in the case of injuries "already sustained," but the statute is not to take effect until a future day, the words quoted must be referred to the time when the act takes effect, and not to the date of its passage; in legal contemplation, the words are spoken when it becomes the law.[23] In New Jersey, an act provided that all judgments "shall be" assignable, and that the assignee might sue thereon in his own name. This might mean either that all judgments recovered before the date of the act, as well as those recovered after, should be thereafter capable of assignment, or that assignments of judgments, whether made before or after the act, should enable the assignee to sue in his own name. But the court, in accordance with the general rule, held that the statute was prospective only, and that it did not apply to a judgment assigned before its passage.[24] In another case, the expression in a statute "when any judgment is obtained," was construed as meaning "when any judgment is hereafter obtained." It was argued that the statute should be so interpreted as to embrace pre-existing judgments. But the court said: "The most that can be said in favor of

[21] People v. Board of Sup'rs of Essex County, 70 N. Y. 228. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[22] Dewart v. Purdy, 29 Pa. 113. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[23] Jackman v. Inhabitants of Garland, 64 Me. 133. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[24] Lydecker v. Babcock, 55 N. J. Law, 394, 26 Atl. 925. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

this construction is that the language used is indefinite as to time. If it may mean 'when any judgment has been obtained,' it may, at least as plainly, be understood to mean 'when any judgment shall be obtained.' For such language in a statute there is a long-established rule of interpretation." [25] Again, a compilation of the statutes of a state, amending and re-enacting a particular law, providing that every conveyance not recorded should be void as against creditors, omitted the words "hereafter made" which were in the re-enacted statute. It was nevertheless held that it did not apply to conveyances executed prior to the date of the original act.[26] And again, a statute attempting to validate a void assessment on a lot in a city, for a street improvement, if it has that effect, does not, by relation, make the assessment valid as of the date when it was levied, but only validates it at the date of the passage of the act.[27]

There is a corollary to the main rule stated above, which is based upon the same reason and is supported by the same considerations. It is thus stated: "Where the retroactive character of a statute is clearly indicated on its face, and although it is free from constitutional objections, yet it will always be subjected to the most circumscribing construction that can possibly be made consistent with the avowed intention of the legislature. Hence, to a statute explicitly retroactive to a certain extent and for a certain purpose, the courts will not, by construction, give a retroactive operation to any greater extent or for any other purpose." [28] It was said by a learned English judge: "It seems to me that even in construing an act which is to a certain extent retrospective, and in construing a section which is to a certain extent retrospective, we ought nevertheless to bear in

[25] McGovern v. Connell, 43 N. J. Law, 106. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[26] Gaston v. Merriam, 33 Minn. 271, 22 N. W. 614. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[27] Reis v. Graff, 51 Cal. 86. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[28] Black, Const. Prohib. § 180; Thames Mfg. Co. v. Lathrop, 7 Conn. 550. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

mind that maxim as applicable whenever we reach the line at which the words of the section cease to be plain. That is a necessary and logical corollary of the general proposition that you ought not to give a larger retrospective power to a section, even in an act which is to some extent intended to be retrospective, than you can plainly see the legislature meant." [29] But there is no reason for the strict application of this rule in cases where the statute is remedial in its nature, and designed to work beneficent results. In that case, as we shall presently see, it is to be construed according to the true intent of the legislature, and liberally if need be.[30]

If the statute is free from all ambiguity, there is no more room for interpretation in this respect than in any other. If the legislature has declared, in terms too plain to be mistaken, that the statute shall be applicable to past facts and transactions, the courts are not at liberty to evade this result by construction. It is then their duty to take the law as they find it, and to give to it that meaning which, alone, on its face, it was intended to bear, even though the consequence should be that they are obliged to pronounce the act void for conflict with the constitution.[31] And the intention of the legislature that the statute should operate retrospectively may be discovered (and may be so plain that the courts cannot allow themselves to disregard it) not only in the use of explicit terms, but in necessary implications from the language used.[32] Such, for instance, would be the case where a retrospective interpretation would make the statute sensible and effective, but any other

[29] Reid v. Reid, L. R. 31 Ch. Div. 402. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[30] See Journeay v. Gibson, 56 Pa. 57. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[31] Lamb v. Powder River Live Stock Co., 132 Fed. 434, 65 C. C. A. 570, 67 L. R. A. 558; Jeffries v. Rowe, 63 Ind. 592; Denny v. Bean, 51 Or. 180, 93 Pac. 693; Baldwin v. City of Newark, 38 N. J. Law, 158. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[32] Halpin v. Prosperity Loan & Building Ass'n, 108 Ill. App. 316. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

would render it unmeaning. When such implications show, indubitably and unambiguously, what was the real intention of the legislature, the interpreter is constrained to follow it.[33]

Retrospective Acts, When Construed as Prospective Also

Another question of statutory construction, which is directly converse to that which we have been considering, but which arises much less frequently, is whether an act, explicitly made retrospective, is to be confined to past cases, or is to be construed as prospective also. This is, of course, always a question of legislative intention. If the design of the legislature is expressed in plain words, the courts have no choice but to carry it into effect. For example, a statute of Indiana, designed to legalize the acts of certain boards of municipal officers, made provision for cases in which "the inspectors of elections have failed" to take certain action. It was held that this was, on its face, retrospective and curative only, and that it could have no prospective force.[34] But in the absence of express language, the question must be determined by reference to the nature of the statute and the objects which it is designed to accomplish. Thus, it is a rule that where a statute impairs or abridges the rights of a certain class of people, or deprives the citizens of one part of the state of privileges enjoyed by citizens of other parts of the state, it should be construed strictly. Hence, if it is explicitly made retroactive, but not explicitly made prospective, it will be construed as retrospective only, that thereby its discriminating or penal provisions may be restricted as much as possible. Thus, a statute of Pennsylvania, in reference to tax sales in certain specified counties, to the effect that the oath of the tax collector shall be deemed conclusive evidence that

[33] Young v. Hughes, 4 Hurl. & N. 76; Stewart v. Vandervort, 34 W. Va. 524, 12 S. E. 736, 12 L. R. A. 50. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[34] Lucas v. State ex rel. School Town of Waynetown, 86 Ind. 180. And see Doe ex dem. Forbes v. Smith, 1 Tyler (Vt.) 38. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

the taxes are unpaid, was held to be retrospective only.[35] But, on the other hand, if the statute is beneficial and remedial, it should be liberally construed, and if there is a substantial doubt whether it was meant to be retroactive only or to extend also to future cases, it should be interpreted in the largest sense which the words will properly bear.[36] Thus, a statute provision that an alien "who shall have resided within the state two years" shall be capable of holding and transmitting real estate the same as a citizen, may apply as well to future as to past residence.[37] So, also, the operation of a law for regulating "all existing railroad corporations," in respect to requiring them to exercise certain care and take certain precautions for the protection of the public, will extend to and control railroads incorporated after, as well as before, its passage, unless exception is made in their charters.[38] There may also be special and peculiar reasons which will suffice to determine this question in particular cases. For example, in New Jersey, it is held that a statute authorizing cities "already divided into wards" to subdivide the wards when they reach a certain size, is not confined to cities which had been divided into wards before the passage of the statute. It will be observed that there was here a fair choice of constructions. But if the act were construed as retrospective only, it would make it "spe-

[35] Marsh v. Nelson, 101 Pa. 51. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[36] It was so held in regard to an act of Congress to quiet titles in favor of persons in actual possession of lands in the District of Columbia. Williams v. Paine, 169 U. S. 55, 18 Sup. Ct. 279, 42 L. Ed. 658. So of a statute providing for the collection of public moneys which "have" been deposited in banks, etc. McIntosh v. Johnson, 51 Neb. 33, 70 N. W. 522. So of an act providing general rules for the construction of statutes. People v. Zito, 237 Ill. 434, 86 N. E. 1041. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[37] Beard v. Rowan, 1 McLean, 135 Fed. Cas. No. 1,181; s. c., 9 Pet. 301, 9 L. Ed. 135. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[38] Indianapolis & St. L. R. Co. v. Blackman, 63 Ill. 117. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

cial legislation," which is forbidden by the constitution of that state. For this reason, the court held it to be prospective also.[39]

STATUTES IMPAIRING VESTED RIGHTS

118. When the effect of giving to a statute a retrospective construction would be to make it destroy or impair vested rights, such construction will be avoided, and the statute will be held to apply to future acts and cases only, provided that this can be done by any reasonable interpretation of the language used by the legislature.[40]

"The courts uniformly refuse to give to statutes a retrospective operation, whereby rights previously vested are injuriously affected unless compelled to do so by language so clear and positive as to leave no room to doubt that such was the intention of the legislature." [41] "The rule is that a statute affecting rights and liabilities should not be so

[39] Wood v. Atlantic City, 56 N. J. Law, 232, 28 Atl. 427. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[40] Southwestern Coal & Imp. Co. v. McBride, 185 U. S. 499, 22 Sup. Ct. 763, 46 L. Ed. 1010; People ex rel. Thorne v. Hays, 4 Cal. 127; Cook v. Walling, 117 Ind. 9, 19 N. E. 532, 2 L. R. A. 769, 10 Am. St. Rep. 17; Niklaus v. Conkling, 118 Ind. 289, 20 N. E. 797; Van Fleet v. Van Fleet, 49 Mich. 610, 14 N. W. 566; Todd v. Board of Election Com'rs of Kalamazoo, Calhoun, Branch, Eaton, and Hillsdale Counties, 104 Mich. 474, 62 N. W. 564, 29 L. R. A. 330; Cranor v. School Dist. No. 2, 151 Mo. 119, 52 S. W. 232; Berley v. Rampacher, 5 Duer (N. Y.) 183; Quackenbush v. Danks, 1 Denio (N. Y.) 128; Jefferson County Nat. Bank v. Dewey, 181 N. Y. 98, 73 N. E. 569; Kelley v. Kelso, 5 Ohio St. 198; Walcutt v. City of Columbus, 27 Ohio Cir. Ct. R. 238; Rader v. Kriebel, 32 Pa. Super. Ct. 548; Dillon v. Dougherty, 2 Grant (Pa.) 99; Hannum v. Bank of Tennessee, 1 Cold. (Tenn.) 398; Rogers v. Lynch, 44 W. Va. 94, 29 S. E. 507; State v. Atwood, 11 Wis. 422; Couch v. Jeffries, 4 Burr. 2460; Moore v. Phillips, 7 Mees. & W. 536. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[41] Chew Heong v. United States, 112 U. S. 536, 5 Sup. Ct. 255, 28 L. Ed. 770. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

construed as to act upon those already existing, and it is the result of the decisions that although the words of a statute are so general and broad in their literal extent as to comprehend existing cases, they must yet be so construed as to be applicable only to such as may thereafter arise, unless the intention to embrace all is clearly expressed." [42]

We shall not in this place enter upon a discussion of the nature of vested rights, as that subject more properly belongs to the domain of constitutional law.[43] But the application of the well-settled rule of construction above stated may be explained by various illustrations from the reported cases. The nature and tenure of estates and their incidents and the rules of inheritance are under the control of the legislature, and may be modified or changed as the public interests or policy may require, but not as to rights already vested; and statutes dealing with these subjects will not be so construed as to make them impair or destroy such existing rights.[44] Thus a statute passed for the purpose of abolishing the rule of community property cannot have a retroactive effect to disestablish rights already attached to such property.[45] So, also, the statutes which have been passed in most of the states, securing to married women the more free and perfect control of their individual property, authorizing them to deal with the same as if sole, and otherwise enlarging their powers over it, and at the same time abridging the husband's rights and interests in such property and his authority to control the disposition of the same, are not construed, unless it is clearly necessary, as having a retroactive effect; that is, in their application to estates of married women already vested, they will

[42] In re Protestant Episcopal Public School, 58 Barb. (N. Y.) 161; Goillotel v. Mayor, etc., of City of New York, 87 N. Y. 441. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[43] See Black, Const. Law (3d Ed.) 596-606.

[44] Crane v. Reeder, 21 Mich. 24, 4 Am. Rep. 430; In re Pell's Estate, 171 N. Y. 48, 63 N. E. 789, 57 L. R. A. 540, 89 Am. St. Rep. 791; Shell v. Matteson, 81 Minn. 38, 83 N. W. 491. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[45] In re Chavez, 149 Fed. 73, 80 C. C. A. 451. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

not be taken as destroying any rights or estates held by husbands in such property, jure uxoris, if such a construction can be fairly avoided.[46] Again, where a mortgage is made prior to the passage of the statute which provides for the vesting, upon foreclosure, of the inchoate interest of the mortgagor's wife, her rights are fixed, upon foreclosure, by the law in force when the mortgage was made. "When a mortgage is executed upon a tract of land, the mortgagee acquires, by contract, a specific lien. * * * The lien thus acquired by the mortgagee becomes by the terms of the contract a vested right, which the legislature can neither abridge nor diminish by subsequent legislation. Any subsequent enlargement of the inchoate interest of the wife in the mortgaged land would necessarily operate as a diminution of the security afforded by the mortgage, and be an invasion of the vested right which the mortgagee had acquired under it." [47] And, generally, any statute regulating the enforcement or foreclosure of mortgages, and which would either diminish the value of the security or embarrass the mortgagee in his endeavors to realize the debt, or impose more onerous conditions upon him, or give greater advantages or benefits to the mortgagor, cannot be held to

[46] Hershizer v. Florence, 39 Ohio St. 516; Quigley v. Graham, 18 Ohio St. 42; Leete v. State Bank of St. Louis, 115 Mo. 184, 21 S. W. 788; Arnold v. Willis, 128 Mo. 145, 30 S. W. 517. Though a married woman comes into possession of real estate after the passage of an act conferring certain rights on married women, yet if her title is derived through a will which took effect before the passage of such act, her rights in the property are determined by the law as it existed prior to the passage of the act, and the husband's freehold, jure uxoris, cannot be thus divested. White v. Hilton, 2 Mackey (D. C.) 339. But the constitutionality of the law allowing a wife to convey her realty without the joinder of her husband in the deed cannot be questioned on the ground that it operates to take away the estate of the husband by marital right, in an action where the property involved was acquired since the estate of the husband by marital right was abolished. Taft v. Cannon (R. I.) 34 Atl. 148. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[47] Lease v. Owen Lodge No. 146, I. O. O. F., 83 Ind. 498; McGlothlin v. Pollard, 81 Ind. 228. See, also, Baldwin v. Cullen, 51 Mich. 33, 16 N. W. 191. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

apply to mortgages in force at the time of its enactment. For such securities constitute or embody a contract, the obligation of which must not be impaired by subsequent legislation; and hence this result will be avoided by construing such laws as intended to have a prospective operation only. This rule is applied, for instance, in cases where the statute gives a right to redeem from foreclosure sale, where no such right before existed or where such right had been expressly waived, or where it extends the time allowed for such redemption.[48] And the same principle applies to laws regulating judicial sales and tax sales, with reference to such matters as the right or time for redemption, the purchaser's right to receive a deed, and the like.[49] But where the substance of the right is not impaired, the procedure for the enforcement of a statutory lien, such as a mechanic's lien, may be governed by the law in force at the institution of suit.[50]

Again, a statute providing for the forfeiture of that part of an estate whereon waste is committed by the tenant for life cannot be construed to affect life estates existing at the time of its enactment.[51] And so a statute authorizing ad-

[48] Barnitz v. Beverly, 163 U. S. 118, 16 Sup. Ct. 1042, 41 L. Ed. 93; State ex rel. Stieff v. Bradshaw, 39 Fla. 137, 22 South. 296; Hull v. State, 29 Fla. 79, 11 South. 97, 16 L. R. A. 308, 30 Am. St. Rep. 95; Watkins v. Glenn, 55 Kan. 417, 40 Pac. 316; Paris v. Nordburg, 6 Kan. App. 260, 51 Pac. 799; State v. Sears, 29 Or. 580, 46 Pac. 785, 54 Am. St. Rep. 808; State ex rel. Waldo v. Fylpaa, 3 S. D. 586, 54 N. W. 599; Wilder v. Campbell, 4 Idaho, 695, 43 Pac. 677; Finlayson v. Peterson, 5 N. D. 587, 67 N. W. 953, 33 L. R. A. 532, 57 Am. St. Rep. 584; Walton v. Fudge, 63 Mo. App. 52; Reed v. Swan, 133 Mo. 100, 34 S. W. 483. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[49] Welsh v. Cross, 146 Cal. 621, 81 Pac. 229, 106 Am. St. Rep. 63; Teralta Land & Water Co. v. Shaffer, 116 Cal. 518, 48 Pac. 613, 58 Am. St. Rep. 194; State ex rel. Lewis v. Bradshaw, 35 Fla. 313, 17 South. 642; American Inv. Co. of Emmetsburg v. Thayer, 7 S. D. 72, 63 N. W. 233. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[50] Berndt v. Armknecht, 50 Ill. App. 467. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[51] Kent v. Bentley, 3 Ohio Dec. 173. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

ministrators to take possession of the real estate of their decedents, not being explicitly retroactive, will not operate to give that right as against the heirs of a person whose estate was in process of administration before the passage of the statute, and whose heirs and devisees had already become vested with the interests to which they were entitled.[52] Where, at the time of the death of a testator, a bequest to a cemetery was void under the rule against perpetuities, and the property bequeathed vested in the testator's next of kin, and a statute was afterwards passed abolishing the rule against perpetuities so far as it affects gifts made to cemetery corporations for designated purposes, before the day for the payment of the legacy, it was held that this did not divest the rights of the next of kin in favor of the cemetery company.[53] So again, the vendor of real estate has a lien upon the property sold for the unpaid purchase money, independent of the existence of a lien evidenced by a title bond or mortgage; and hence a statute which provides that no vendor's lien shall be enforced after a conveyance by the vendee, unless the lien is recorded, cannot apply to sales made before the enactment of the statute.[54] So, likewise, the statutes which give to occupying claimants, life tenants, and others, in certain cases, the benefit of improvements placed by them upon the land before eviction or before the termination of their estate, are not construed retroactively unless the plain language of the law requires it.[55] Moreover, a right of action, completely accrued under the existing law, may be a vested right which the courts are bound to protect. Thus, a statute passed

[52] Van Fleet v. Van Fleet, 49 Mich. 610, 14 N. W. 566. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[53] Hartson v. Elden, 50 N. J. Eq. 522, 26 Atl. 561. And see Butler v. Trustees of Parochial Fund of Protestant Episcopal Church, 92 Hun, 96, 36 N. Y. Supp. 562. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[54] Jordan v. Wimer, 45 Iowa, 65. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[55] Shay's Appeal, 51 Conn. 162; Wilson v. Red Wing School Dist., 22 Minn. 488; Folsom v. Clark, 72 Me. 44. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

after the accruing of a cause of action based upon an injury caused by defendant's negligence, limiting the amount of recovery in such cases, will be construed, if possible, as prospective only, and will consequently have no bearing upon plaintiff's right to recover full damages.[55] A statute of limitations is not to be construed retrospectively unless such is the plain and manifest intention of the legislature. More especially is this the rule where the effect of giving it a retrospective operation would be to cut off altogether the remedy on existing causes of action, or to reduce unreasonably the time within which that remedy may be sought.[57] A statute giving exclusive jurisdiction where concurrent jurisdiction has been exercised should not be construed retroactively, unless no other construction can fairly be given.[58] No person can have a vested right in a penalty or forfeiture until it has been judicially ascertained and declared. Hence, if it has not been reduced to judgment before a repeal of the statute which created the right of action, the penalty or forfeiture falls with the law, and cannot afterwards be enforced. But a right to a penalty, forfeiture, or bounty, when once it has become fully vested, should not be held to be divested by a subsequent statute, if the statute can be so construed as to avoid this retroactive

[56] Osborne v. City of Detroit (C. C.) 32 Fed. 36; Gorman v. McArdle, 67 Hun, 484, 22 N. Y. Supp. 479. So a statute providing that the state engineer and his assistants shall be liable only for the payment of actual damages caused by their entry on private lands, such entry being made for the purpose of establishing the boundary between certain counties, as authorized and directed by a previous statute, will not take away the right of action for previous trespasses committed by such officers. Litchfield v. Pond, 186 N. Y. 66, 78 N. E. 719. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[57] State v. Pinckney, 22 S. C. 484; Smith v. Packard, 12 Wis. 371; Chapman v. Douglas County, 107 U. S. 348, 2 Sup. Ct. 62, 27 L. Ed. 378; Moody v. Hoskins, 64 Miss. 468, 1 South. 622; Bramlett v. Wetlin, 71 Miss. 902, 15 South. 934. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[58] State v. Littlefield, 93 N. C. 614. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

effect.[59] And, on the same principle, an act of Congress relating to the readjusting of the salaries of certain public officers in certain cases will not be construed retrospectively, so as to make it affect salaries for terms already expired.[60]

STATUTES IMPOSING PENALTIES AND LIABILITIES

119. A statute imposing a new penalty or forfeiture, or a new liability or disability, or creating a new right of action, will not be construed as having a retroactive operation, if such consequences can fairly be avoided by interpretation.[61]

This is the rule, for example, in regard to the statutes which give a right of action in damages for injuries resulting from negligence or wrongful act and causing the death of a human being,[62] and also in regard to the civil damage acts.[63] So also, a revenue act imposing penalties upon delinquent taxpayers should not be so construed as to affect persons who became delinquent before the statute took effect.[64] And a statute authorizing a forfeiture of dower or

[59] State ex rel. Thomas v. Youmans, 5 Ind. 280; People ex rel. East Saginaw Salt Mfg. Co. v. Board of State Auditors, 9 Mich. 327; Breitung v. Lindauer, 37 Mich. 217. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[60] United States v. Wanamaker, 10 Mackey (D. C.) 119. *See "Statutes," Dec. Dig. (Key No.) § 265; Cent. Dig. §§ 346, 347.*

[61] Wright v. Southern Ry. Co. (C. C.) 80 Fed. 260; Read v. Boston & A. R. Co., 140 Mass. 199, 4 N. E. 227; Huff v. Sovereign Camp of Woodmen of the World, 85 Mo. App. 96; City of Rutland v. Town of Chittenden, 74 Vt. 219, 52 Atl. 426; Keeley v. Great Northern Ry. Co., 139 Wis. 448, 121 N. W. 167. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[62] Kelley v. Boston & M. R. R., 135 Mass. 448; Chicago, St. L. & N. O. R. Co. v. Pounds, 11 Lea (Tenn.) 127. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[63] Reinhardt v. Fritzsche, 69 Hun, 565, 23 N. Y. Supp. 958. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[64] Bartruff v. Remey, 15 Iowa, 257. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

curtesy "whenever a married man shall be deserted by his wife, or a married woman by her husband, for the space of one year," should be construed as prospective only, and as applying only to cases of desertion beginning after the law takes effect.[65] On the same principle, a statute providing that no person shall recover any fees or charges for medical or surgical services, unless he shall prove at the trial that he is duly registered under the act, does not apply to an action commenced before the passage of the statute.[66] And an act prohibiting the intermarriage of a white person with an Indian, enacted after such a marriage, has no bearing upon the validity of the marriage; that is, it should not be construed retroactively so as to invalidate a marriage which was good when contracted.[67] Again, an act providing that married women shall be bound, like other persons, by estoppels in pais, is not retroactive, and has no application to a mortgage made by a married woman before the enactment.[68] After an administration bond had been executed, an act was passed providing that ten per cent. damages should be awarded against administrators and their sureties on the bonds. But it was held that the ten per cent. could not be awarded on the bond mentioned.[69] It is also said that a statute increasing the rate of interest operates only on future rights.[70]

The same principle has been applied to the employer's liability laws recently enacted by Congress and by some of the state legislatures. These statutes generally take away the right to plead contributory negligence as a defense, at

[65] Giles v. Giles, 22 Minn. 348. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[66] Thistleton v. Frewer, 31 L. J. Exch. 230. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[67] Illinois Land & Loan Co. v. Bonner, 75 Ill. 315. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[68] Levering v. Shockey, 100 Ind. 558. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[69] Steen v. Finley, 25 Miss. 535. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[70] Cummings v. Howard, 63 Cal. 503. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

least in cases where the negligence of the injured party was slight in comparison with that of the employer, and sometimes they also abrogate the common-law rule in respect to the acts or negligence of a fellow servant. It has been attempted to invoke the benefit of these statutes in cases where the injury occurred before their enactment, the argument being that such statutes merely deprived the employer of an arbitrary defense previously existing under the rules of law. But the courts have refused to give them a retroactive effect, holding that, on the contrary, they created a new right and imposed a new liability.[71] For similar reasons, a statute giving to creditors of corporations a remedy not previously possessed against the individual stockholders will not be so construed as to make it available against those who became stockholders before its enactment.[72] And a law authorizing insolvency proceedings against nonresidents does not affect contracts made before its passage.[73] And the same applies to a statute authorizing an action against both the municipality and an adjoining landowner for injuries caused by defective sidewalks.[74]

REMEDIAL STATUTES

120. Remedial statutes are to be liberally construed; and if a retrospective interpretation will promote the ends of justice and further the design of the legislature in enacting them, or make them applicable to cases which are within the reason and spirit of the enactment, though not within its direct words,

[71] Plummer v. Northern Pac. Ry. Co. (C. C.) 152 Fed. 206; Wright v. Southern Ry. Co. (C. C.) 80 Fed. 260. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[72] Grand Rapids Sav. Bank v. Warren, 52 Mich. 557, 18 N. W. 356; Ball v. Anderson, 196 Pa. 86, 46 Atl. 366, 79 Am. St. Rep. 693. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[73] Stetson v. Hall, 86 Me. 110, 29 Atl. 952. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

[74] Fife v. City of Oshkosh, 89 Wis. 540, 62 N. W. 541. *See "Statutes," Dec. Dig. (Key No.) § 266; Cent. Dig. § 348.*

they should receive such a construction, provided it is not inconsistent with the language employed.[75]

"It is undoubtedly the general rule," says the court in Indiana, "that statutes are to be construed and applied prospectively, unless a contrary intent is manifested in clear and unambiguous terms, and it is sometimes held that, to work an exception, the intent favoring retrospective application must affirmatively appear in the words of the statute. The better rule of construction, and the rule peculiarly applicable to remedial statutes, is that a statute must be so construed as to make it effect the evident purpose for which it was enacted; and if the reason of the statute extends to past transactions, as well as to those in the future, then it will be so applied, although the statute does not, in terms, so direct, unless to do so would impair some vested right or violate some constitutional guaranty."[76] To the same general effect is the following language employed by the Supreme Court of Alabama: "The statutes excluded from judicial favor and subjected to the strictness of judicial construction—statutes which may be properly denominated 'retrospective'—are such as take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability, in respect to transactions or considerations already past. Such statutes are offensive to the principles of sound and just legislation, and it is of these that the authorities use the term 'odious' and other epithets expressive of judicial oppro-

[75] Sturgis v. Hull, 48 Vt. 302; Dobbins v. First Nat. Bank of Peoria, 112 Ill. 553; Broaddus' Devisees v. Broaddus' Heirs, 10 Bush (Ky.) 299; People v. Board of Sup'rs of Ulster County, 63 Barb. 83; City of Indianapolis v. Imberry, 17 Ind. 175; Augusta Bank v. City of Augusta, 49 Me. 507; Edelstein v. Carlile, 33 Colo. 54, 78 Pac. 680; McFarland v. Benton, 10 Ky. Law Rep. 873; Fowler v. Lewis' Adm'r, 36 W. Va. 112, 14 S. E. 447. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[76] Connecticut Mut. Life Ins. Co. v. Talbot, 113 Ind. 373, 14 N. E. 586, 3 Am. St. Rep. 655. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

brium. There are other statutes which, when operating retrospectively, have not incurred judicial condemnation, and to which a liberal construction, for the consummation of the just and beneficent purposes in view, has been freely accorded. Such statutes are intended to remedy a mischief, promote public justice, correct innocent mistakes into which parties may have fallen, cure irregularities, or give effect to the acts or contracts of individuals fairly done and made. These are remedial statutes, conducive alike to individual and public good." [77]

For example, where it clearly appears that the object of the statute is to obviate controversies between innocent parties arising out of defective legislation or the improper conduct of public officers, and to accomplish this object it is necessary to give it a retroactive operation, although there may be no express words in the act giving to it such an effect, it is the duty of the courts so to construe it.[78] For this reason, an act providing that a general devise or bequest shall operate as an execution of a power of appointment, unless a contrary intention appears by the will, is not confined to wills executed after the date of the act, but extends to cases where the testator dies after its enactment.[79] On the same principle, a statute declaring that no words of inheritance shall be necessary to convey a fee by devise may operate retrospectively.[80] And a statute providing that "actions at law may be sustained against any married woman upon any contract made by her upon her personal credit, for the benefit of herself, her family, or her estate," applies to such contracts made before the passage of the act as

[77] Ex parte Buckley, 53 Ala. 42. See, also, Tilton v. Swift & Co., 40 Iowa, 78. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[78] People v. Spicer, 99 N. Y. 225, 1 N. E. 680. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[79] Aubert's Appeal, 109 Pa. 447, 1 Atl. 336. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[80] Adams v. Chaplin, 1 Hill, Eq. (S. C.) 265. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

well as to those made after.[81] A statutory provision that, when mortgaged land is taken for public use under the power of eminent domain, the mortgagor and mortgagee may join in a petition for damages, is remedial in its character, and it will apply to proceedings begun after it took effect, although the land was previously taken.[82] An act authorizing justices of the peace to issue garnishee process may be so construed as to permit the issue of such process upon a judgment rendered before the enactment of the statute, the law being remedial, and no constitutional rule being affected by such construction.[83] An act giving to the plaintiff suing for the purchase money of land a lien thereon while in the vendee's hands, and authorizing a writ of seizure on the filing of the declaration, and a special execution for the sale of the property in addition to a personal judgment, is remedial in its nature, and may constitutionally be made applicable to causes of action existing at the time of its passage.[84] Again, a statute which extends the time and releases the conditions prescribed in a former statute in regard to the issuing of executions, may apply to judgments recovered before the passage of the act, without being liable to the objection of affecting vested rights.[85] And a statutory provision that a judgment against the principal on an injunction bond shall conclude the surety also may be held to apply to a bond executed before the enactment of the statute; the remedy only, not the right, is affected.[86]

[81] Buckingham v. Moss, 40 Conn. 461. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[82] Wood v. Inhabitants of Westborough, 140 Mass. 403, 5 N. E. 613. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[83] Fisher v. Hervey, 6 Colo. 16. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[84] Excelsior Mfg. Co. v. Keyser, 62 Miss. 155. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[85] Henschall v. Schmidtz, 50 Mo. 454. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[86] Pickett v. Boyd, 11 Lea (Tenn.) 498. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

Again, an act declaring that marriage between persons within the prohibited degrees of consanguinity shall not be pronounced void after the death of either, if the marriage was followed by cohabitation and the birth of issue, applies to such marriages contracted before the enactment of the statute, as well as to those contracted afterwards.[87] For similar reasons it is held that a statute which confers upon cities, not previously possessing it, the power to sell real and personal property for delinquent taxes, may apply as well to taxes delinquent before the act was passed as to those becoming delinquent thereafter.[88] An English statute enacted that "every person convicted of felony shall forever be disqualified from selling spirits by retail, and no license shall be granted to any person who shall have been so convicted." It was held that this applied to the case of a person who had been convicted of felony before the passage of the act. The judges considered that the act in question was not so much designed for the punishment of the offender as to protect the public against the dangers which might arise from the keeping of public houses by convicted felons; and hence the case at bar was within the reason and spirit of the act.[89] Again, where an act of Congress enlarges the jurisdiction of the Circuit Courts, it will be construed to apply to cases pending and undetermined at the passage of the act, unless excluded by its terms or by necessary implication from the language of the act.[90]

A statute providing that, if any tax is prevented from being collected, the amount thereof shall be added to the tax for the current year, being purely remedial, applies to taxes levied and prevented from being collected prior, as

[87] Baity v. Cranfill, 91 N. C. 293, 49 Am. Rep. 641. See, also, Brower v. Bowers, 1 Abb. Dec. (N. Y.) 214. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[88] Haskel v. City of Burlington, 30 Iowa, 232. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[89] Queen v. Vine, L. R. 10 Q. B. 195. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[90] Larkin v. Saffarans (C. C.) 15 Fed. 147. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

well as subsequent, to its passage.[91] So, also, under a statute giving a right of action against the state to all persons who may have claims against the state on contract, which have not been allowed by the state examiners, a suit may be maintained on a contract on which the right of action accrued before the passage of the statute.[92] And a statute under which counts at common law for conscious suffering may be joined with a count under the statute for conscious suffering followed by death is remedial, and is therefore applicable where the cause of action arose before its passage.[93] But, as a general rule, in an action for injuries by negligence, statutes passed after the accident cannot be considered.[94]

STATUTES REGULATING PROCEDURE

121. Statutes regulating the procedure of the courts will be construed as applicable to causes of action accrued, and actions pending and undetermined, at the time of their passage, unless such actions are expressly excepted, or unless vested rights would be disturbed by giving them a retrospective operation.[95]

[91] State v. Baldwin, 62 Minn. 518, 65 N. W. 80. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[92] Chapman v. State, 104 Cal. 690, 38 Pac. 457, 43 Am. St. Rep. 158. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[93] Bartley v. Boston & N. St. R. Co., 198 Mass. 163, 83 N. E. 1093. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[94] Gallowshaw v. Lonsdale Co., 25 R. I. 383, 55 Atl. 932. *See "Statutes," Dec. Dig. (Key No.) §§ 264, 267; Cent. Dig. §§ 345, 350–352.*

[95] Sampeyreac v. United States, 7 Pet. 222, 8 L. Ed. 665; Aultman & Taylor Machinery Co. v. Fish, 120 Ill. App. 314; Steele v. Empsom, 142 Ind. 397, 41 N. E. 822; Davidson v. Wheeler, Morris (Iowa) 238; Beebe v. Birkett, 108 Mich. 234, 65 N. W. 970; Converse v. Burrows, 2 Minn. 229 (Gil. 191); Clark v. Kansas City, St. L. & C. R. Co., 219 Mo. 524, 118 S. W. 40; Laird v. Carton, 196 N. Y. 169, 89 N. E. 822, 25 L. R. A. (N. S.) 189; People v. City of Syracuse, 128 App. Div. 702, 113 N. Y. Supp. 707; Dieterich v. Fargo, 194 N. Y.

"The presumption against retrospective construction," says the court in Oregon, "has no application to enactments which affect only the mode of procedure and practice of the courts. No person has a vested right in any form of procedure. He has only the right of prosecution or defense in the manner prescribed for the time being, and if this mode of procedure is altered by statute, he has no other right than to proceed according to the altered mode. Indeed, the rule seems to be that statutes pertaining to the remedy or course and form of procedure, but which do not destroy all remedy for the enforcement of the right, are retrospective, so as to apply to causes of action subsisting at the date of their passage. Statutes which relate to the mode of procedure, and affect only the remedy, and do not impair the obligations of contracts or vested rights, are valid; and it is no objection to them that they are retroactive in their operation. It is competent for the legislature at any time to change the remedy or mode of procedure for enforcing or protecting rights, provided such enactments do not impair the obligations of contracts, or disturb vested rights, and such remedial statutes take up proceedings in pending causes where they find them; and when the statute under which such proceedings were commenced is amended, the subsequent proceedings must be regulated by the amendatory act." [96]

359, 87 N. E. 518, 22 L. R. A. (N. S.) 696; People v. Herkimer Court of Common Pleas, 4 Wend. (N. Y.) 211; Kille v. Reading Iron Works, 134 Pa. 225, 19 Atl. 547; Lane v. White, 140 Pa. 99, 21 Atl. 437; In re Borough of Washington, 26 Pa. Super. Ct. 296; Lee v. Buckheit, 49 Wis. 54, 4 N. W. 1077; Blair v. Cary, 9 Wis. 543. But this rule is not universally accepted. See, for example, Boston & M. R. R. v. Cilley, 44 N. H. 578; Auditor General v. Chandler, 108 Mich. 569, 66 N. W. 482; Merwin v. Ballard, 66 N. C. 398. In New Hampshire, where all retrospective laws are specifically prohibited by the Constitution of the state, it is held that statutes which prescribe new rules for the decision of existing causes of action are retrospective, and therefore unconstitutional and inoperative in such cases. Kennett's Petition, 24 N. H. 139; Smith v. Haines, 58 N. H. 157. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[96] Judkins v. Taffe, 21 Or. 89, 27 Pac. 221. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

Laws Giving New Remedies

In the class of statutes which may be construed retrospectively are those which create a new remedy, or enlarge the existing remedy, for existing causes of action.[97] For example, a statute providing a new remedy against persons who place obstructions in public highways may apply as well to the case of obstructions existing at the time of its passage as to those subsequently placed therein.[98] So a statute extending the right of attachment to actions for personal injuries may apply to actions for injuries occurring before it took effect.[99] The same might be true of a statute giving a lien to judgments, where no such lien before existed; but this will not be held to be the case where the statute is so worded as to show a clear legislative intention that it should operate prospectively only.[100] But a statute with a proviso that nothing therein contained shall be construed to prevent an action on a judgment after twenty years from its date, and a recovery thereon, in case it shall be established by competent evidence that the judgment,

[97] Barnett v. Vanmeter, 7 Ind. App. 45, 33 N. E. 666; Myers v. Moran, 113 App. Div. 427, 99 N. Y. Supp. 269. But this rule does not apply where the law is plainly expressed as applicable only to future transactions. For instance, an act of Congress, passed in 1894, provides that any person contracting with the United States for the prosecution of a public work shall give a bond to pay all persons supplying him with labor or material, and that a person supplying labor or material shall have a right of action on such bond in the name of the United States. But it was held that this statute would not sustain a suit on such a bond given before the passage of the act, for the reason that the statute begins with the words: "Hereafter any person entering into a formal contract with the United States," etc. Sears v. Mahoney (C. C.) 66 Fed. 860. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[98] Lawrence R. Co. v. Mahoning County Com'rs, 35 Ohio St. 1. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[99] Rouge v. Rouge, 15 Misc. Rep. 36, 36 N. Y. Supp. 436. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[100] See Ohio Nat. Bank v. Berlin, 26 App. D. C. 218; Denny v. Bean, 51 Or. 180, 93 Pac. 693. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

or some part thereof, remains unpaid, may be construed to apply to judgments obtained before its enactment.[101]

Rules of Pleading

The rules of pleading are always under the control of the legislature, and may be changed from time to time; and a statute changing such rules will apply to causes of action accrued, and even to actions commenced, before its enactment.[102] Thus a statute authorizing releases pleaded in bar to be avoided for fraud by the reply, and requiring the issues thus raised to be submitted to the jury, deals only with remedies, not with rights, and applies to actions pending at the time of its passage.[103] So an act extending the time within which a garnishee may answer in a justice's court will be held to apply to one who was summoned as a garnishee before the passage of the act.[104]

Parties to Actions

Statutes which change the rule as to the parties necessary to the determination of controversies will take effect on prior as well as subsequent contracts and transactions, and the actions arising therefrom.[105]

Rules of Evidence

The rules of evidence are not property in which any person can have a vested right. They are a part of the substantive law of the state, and the legislature has the power to make, modify, and repeal such rules, even retroactively, subject only to such specific restrictions as may be found

[101] Lawton v. Perry, 40 S. C. 255, 18 S. E. 861. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[102] Howard v. Fall River Iron Works Co., 203 Mass. 273, 89 N. E. 615; Gibson v. Miller, 28 Ohio Cir. Ct. R. 421. See Hubbard v. New York, N. H. & H. R. Co., 70 Conn. 563, 40 Atl. 533. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[103] State ex rel. Cardwell v. Stuart, 111 Mo. App. 478, 86 S. W. 471. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[104] Willis v. Fincher, 68 Ga. 444. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[105] Tompkins v. Forrestal, 54 Minn. 119, 55 N. W. 813. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

in the constitutions.[106] There is consequently no reason why new or modified rules of evidence should not be made applicable to pending controversies, and they will generally be so construed, unless a contrary intention plainly appears.[107] This applies to statutes relating to the admissibility of evidence,[108] to the question of what shall constitute prima facie evidence,[109] and to the burden of proof.[110] In a case in Maryland, it appeared that a bond to the state was executed at a time when such bonds were required by the revenue laws of the state to be on stamped paper. A suit was brought on this bond, and the court refused to admit it in evidence for want of the stamp. An appeal was taken, and, pending the appeal, the stamp law was repealed, and validity given to all contracts previously made on unstamped paper. It was held that the statute had a retroactive effect, and the judgment was reversed. It might have been supposed that the obligor in the bond had a vested right to object to its admission in evidence, on account of the want of a stamp. But the court observed that the

[106] Southern Ry. Co. v. Tift, 148 Fed. 1021, 79 C. C. A. 536; Mallery v. Frye, 21 App. D. C. 105; Campbell v. Skinner Mfg. Co., 53 Fla. 632, 43 South. 874; Wheelock v. Myers, 64 Kan. 47, 67 Pac. 632; State v. Kline, 50 Or. 426, 93 Pac. 237; State v. Weston, 3 Ohio S. & C. P. Dec. 15; Haney v. Gartin, 51 Tex. Civ. App. 577, 113 S. W. 166; Ariola v. Newman, 51 Tex. Civ. App. 617, 113 S. W. 157; McKinstry v. Collins, 76 Vt. 221, 56 Atl. 985; In re McNaughton's Will, 138 Wis. 179, 118 N. W. 997; Sandberg v. State, 113 Wis. 578, 89 N. W. 504; Downs v. Blount, 170 Fed. 15, 95 C. C. A. 289. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[107] First Methodist Episcopal Church v. Fadden, 8 N. D. 162, 77 N. W. 615; Jessee v. De Shong (Tex. Civ. App.) 105 S. W. 1011; Howard v. Moot, 64 N. Y. 262; Holmes v. Hunt, 122 Mass. 505, 23 Am. Rep. 381. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[108] Stocker v. Foster, 178 Mass. 591, 60 N. E. 407. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[109] Woodvine v. Dean, 194 Mass. 40, 79 N. E. 882; Fish v. Chicago, St. P. & K. C. Ry. Co., 82 Minn. 9, 84 N. W. 458, 83 Am. St. Rep. 398. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[110] Cincinnati, H. & D. R. Co. v. Hedges, 15 Ohio Cir. Ct. R. 254. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

stamp act was passed for the purpose of raising revenue for the state, and did not design or profess to confer upon the citizens of the state, or others, any private benefit or rights, but operated to impose burdens upon them for state purposes. Hence the legislature had full authority to remove such burdens at any time.[111] The case is somewhat different, however, with regard to statutes affecting the rules of evidence in criminal prosecutions. In view of the rights of persons charged with crime, so carefully and jealously guarded by the constitutions, the rules of evidence in force at the time of the commission of the alleged offense must govern the trial, or at least such a person must be exempted from the retroactive operation of any statute which would change those rules to his disadvantage.[112]

Jurisdiction of Courts

In pursuance of the same general principles, statutes granting or transferring jurisdiction of causes may be so construed as to operate upon existing causes of action.[113] But as a general rule a legislative enactment will not be construed to oust a jurisdiction once regularly and fully vested, unless such an intention is clearly expressed.[114]

Procedure

Statutes which, without affecting the substantial rights of the parties, make changes in matters relating merely to the practice and procedure of the courts may, and generally will, be given a retrospective operation.[115] Thus an act

111 State, to Use of Mayor, etc., of Baltimore v. Norwood, 12 Md. 195. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

112 Black, Const. Law (3d Ed.) pp. 604, 678, 709. And see Kittrell v. State, 89 Miss. 666, 42 South. 609. *See "Statutes," Dec. Dig. (Key No., § 267; Cent. Dig. §§ 350–359.*

113 Grand Trunk Ry. of Canada v. Board of Com'rs of Cumberland County, 88 Me. 225, 33 Atl. 988; Ball v. Presidio County (Tex. Civ. App.) 27 S. W. 702. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

114 Crane v. Reeder, 28 Mich. 527, 15 Am. Rep. 223. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

115 Phœnix Ins. Co. v. Shearman (Tex. Civ. App.) 43 S. W. 1063; Gibson v. Miller, 28 Ohio Cir. Ct. R. 28; Wallace v. Baker, 2 Munf.

of the legislature prescribing the order of time in which causes are to be tried is merely remedial, and must apply to all cases not determined at the date of its promulgation.[116] So a statute giving to a defendant, in certain classes of cases, a right to require the plaintiff to furnish security for costs, may be applied to an action commenced before the passage of the statute and pending at that time.[117] And so of a statute changing the procedure for the enforcement of a mechanic's lien.[118]

Vested Rights—Obligation of Contracts

But, as has been already stated, statutes which would impair or destroy vested rights will not be allowed to operate retrospectively, if that result can be avoided by any reasonable construction. And this rule is applicable to laws relating to remedies and the course of procedure and practice in the courts, in respect to their applicability to pending suits.[119] Thus, in a case in Alabama, the defendant pleaded a set-off, and the plaintiff, in reply, pleaded the statute of limitations. After these pleadings were interposed, an act was passed excepting cases of set-off from the operation of the statute of limitations, where the set-off was a legal subsisting claim at the time the right of action on the claim in suit accrued to the plaintiff. It was held that this act did not operate retrospectively, so as to deprive the plaintiff of the benefit of his replication.[120] And it must be remarked in

(Va.) 334. This rule may be applied even to criminal prosecutions. Jones v. Commonwealth, 86 Va. 661, 10 S. E. 1005. But see Secor v. State, 118 Wis. 621, 95 N. W. 942. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[116] Hoa v. Lefranc, 18 La. Ann. 393. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[117] Kimbray v. Draper, L. R. 3 Q. B. 160. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[118] Orman v. Crystal River Ry. Co., 5 Colo. App. 493, 39 Pac. 434. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[119] Files v. Fuller, 44 Ark. 273. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[120] Bradford v. Barclay, 42 Ala. 375. But see Campbell v. Holt, 115 U. S. 620, 6 Sup. Ct. 209, 29 L. Ed. 483. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

general that the right to plead the statute of limitations as a defense, when its bar has fully attached, becomes a vested right, which cannot be interfered with or destroyed by reviving the cause of action, at least in cases where the title to property has vested under the statute,[121] though it may be otherwise where the demand is for a personal debt or on a contract, or in other cases where the statute merely gives a defense.[122] So, again, a judgment, final or not appealed from, is a vested right of property in such a sense that the legislature cannot destroy or diminish its value or deprive the owner of the fruits of it.[123] Thus a statute of Vermont provided that "the judgment to account in the common-law action of account shall not debar the defendant from making any defense before the auditor which he might have made by special plea in bar of the action if said judgment to account had not been rendered." But it was held that this statute was not retrospective, and did not apply to a case in which judgment to account was rendered, and an auditor appointed, before the passage of the act, but wherein the account was not taken until after that date. The ground of the decision was that, if the statute were allowed to affect the pending case, it would deprive the plaintiff of a substantial right, namely, the right to rely

121 Edelstein v. Carlile, 33 Colo. 54, 78 Pac. 680; Lawrence v. City of Louisville, 96 Ky. 595, 29 S. W. 450, 27 L. R. A. 560, 49 Am. St. Rep. 309; Ireland v. Mackintosh, 22 Utah, 296, 61 Pac. 901; Eingartner v. Illinois Steel Co., 103 Wis. 373, 79 N. W. 433, 74 Am. St. Rep. 871; Power v. Telford, 60 Miss. 195; McEldowney v. Wyatt, 44 W. Va. 711, 30 S. E. 239, 45 L. R. A. 609; Dyer v. City of Belfast, 88 Me. 140, 33 Atl. 790; Denny v. Bean, 51 Or. 180, 93 Pac. 693. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

122 Campbell v. Holt, 115 U. S. 620, 6 Sup. Ct. 209, 29 L. Ed. 483; McEldowney v. Wyatt, 44 W. Va. 711, 30 S. E. 239, 45 L. R. A. 609. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

123 Village of New Holland v. Holland, 99 Ill. App. 251; Chiles v. School Dist. of Buckner, 103 Mo. App. 240, 77 S. W. 82; Merchants' Bank of Danville v. Ballou, 98 Va. 112, 32 S. E. 481, 44 L. R. A. 306, 81 Am. St. Rep. 715. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

upon the judgment rendered.[124] To take another illustration: A statute of Iowa provided that pension money should not be liable to be taken for the pensioner's debts. Before this act, a creditor of a pensioner had begun an action to subject the pension money to the satisfaction of his claim. It was held that the statute did not affect the creditor's rights; for he had a vested right of action, and by the institution of his suit he had acquired an equitable lien which the legislature could not divest.[125] So again, under a statute limiting parties to two actions for the recovery of land, and providing that nothing contained therein shall prevent persons from being entitled to two actions after the passage of the act, an action pending at the time the act was passed cannot be considered as one of the actions allowed.[126] It is a general rule that the law in force at the time of the making of a contract governs the rights of the parties, but the law in force at the time of the proceedings to enforce the contract controls the remedy and the procedure with respect thereto,[127] or, in other words, that the remedy provided for the enforcement of a contract is no part of its obligation.[128] Yet, if the application of a new or modified remedy to an existing state of facts would actually impair the obligation of a contract, the statute providing it will not be construed with a retroactive operation.[129] So, again, where a law imposing a new condition on a common-law right of action does not provide for existing rights of action, and yet uses general language applica-

[124] Sturgis v. Hull, 48 Vt. 302. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[125] Goble v. Stephenson, 68 Iowa, 270, 26 N. W. 433. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[126] Duren v. Kee, 41 S. C. 171, 19 S. E. 492. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[127] Peterson v. Mayer, 142 Ill. App. 257. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[128] Black, Const. Law (3d Ed.) 746. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[129] State ex rel. McNeal v. Bennett, 24 Ind. 383; Adams v. Creen, 100 Ala. 218, 14 South. 54; McCracken v. Hayward, 2 How. 608, 11 L. Ed. 397. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

ble to such rights, the court must apply it, or not, to pre-existing rights, according as it shall judicially appear that a reasonable time was left after it took effect for the particular person affected to perform the condition.[130] For similar reasons, a law requiring persons suing to set aside tax deeds to tender the amount for which the property was sold, together with taxes subsequently paid, will be held prospective only in its operation.[131]

Cases Pending on Appeal

A more difficult question, and one on which the authorities are somewhat divided, is as to the effect of statutes of this kind on cases where a judgment has already been rendered and the case is pending on appeal. Let it be supposed that a judgment has been correctly given in the lower court, for or against one of the parties, on a ground of claim or defense which is afterwards annulled, obviated, or made immaterial by a retrospective statute. In the mean time, the case has been appealed. The question then is whether the appellate court should reverse the judgment (which was correct and in accordance with the law at the time it was rendered) or refuse to give effect to the retrospective statute in this particular case. In some jurisdictions it is maintained that the judgment of the lower court must be tested by the law as it stood at the time the judgment was rendered, and that the question of its affirmance or reversal must be decided solely with reference to the then existing state of the law. Thus, for example, a judgment was rendered declaring a tax levy invalid because the several items of the tax were illegally blended in one assessment roll. An appeal was taken, and, pending the appeal, a statute was passed legalizing the assessment and assessment roll. But it was held that this act could not be deemed to operate retrospectively upon the case in which the said judgment had been rendered, and that the judgment must be affirmed

[130] Relyea v. Tomahawk Paper & Pulp Co., 102 Wis. 301, 78 N. W. 412, 72 Am. St. Rep. 878. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[131] Haarstick v. Gabriel, 200 Mo. 237, 98 S. W. 760. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

on appeal, notwithstanding the act.[182] But on the other hand, there are respectable authorities to the effect that a curative or legalizing act, or one removing a disability or waiving an objection, if applicable to the state of facts on which a judgment was rendered, will go behind the judgment and thereby render it erroneous, so as to require its reversal on appeal.[183]

CURATIVE STATUTES

122. Curative statutes, whether relating to judicial or administrative action, or to the transactions of private parties, are intended to operate upon past facts or acts, and are therefore necessarily retrospective.

123. Such statutes can be applied only in cases where the particular defect, omission, or irregularity to be cured is of such a nature that the legislature might competently have dispensed with it or rendered it immaterial in advance; and they must be so restricted as not to transgress any positive provisions of the constitution or interfere with vested rights of third persons.

Curative statutes are those which undertake to cure errors and irregularities in judicial or administrative proceedings, and which are designed to give effect to contracts and other transactions between private parties which otherwise would fail of producing their intended consequences by reason of some statutory disability or the failure to comply

[182] People v. Moore, 1 Idaho, 662. And see Wright v. Graham, 42 Ark. 140; Kingsbery v. Ryan, 29 Ga. 108, 17 S. E. 689; Bedier v. Fuller, 116 Mich. 126, 74 N. W. 506; Wallace v. Oregon Short Line R. Co., 16 Idaho, 103, 100 Pac. 904. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

[183] King v. Course, 25 Ind. 202; State, to Use of Mayor, etc., of Baltimore, v. Norwood, 12 Md. 195. And see Gibson v. Miller, 28 Ohio Cir. Ct. R. 28; In re Commissioner of Public Works in City of New York, 111 App. Div. 285, 97 N. Y. Supp. 503. *See "Statutes," Dec. Dig. (Key No.) § 267; Cent. Dig. §§ 350–359.*

with some technical requirement. They are therefore necessarily retroactive in their character.[134] The same power of the legislature to amend what has previously been done, and done amiss or ineffectually, may be applied to its own enactments, and it is competent for the legislature to cure defects in a prior statute, which, when so cured, will become valid prospectively.[135] And an act of this kind may apply to and govern a suit pending at the time of its passage, as where the action is founded on the invalidity of certain proceedings which are retrospectively validated by the curative act,[136] unless this kind of interference with pending suits is forbidden by the constitution.[137] But, when a claim or demand has passed into judgment, it is beyond the control of the legislature, and cannot be affected by such a statute.[138]

Aside from the question of their retroactive operation, curative statutes, like all others, are subject to interpretation by the courts. Thus, in a case in Iowa, where a curative statute relating to mutual powers of attorney executed by husband and wife was enacted shortly after the rendition of a judicial decision on the same subject, it was held that it might reasonably be presumed that the statute was framed with reference to that decision, and that it should be accordingly limited in its application.[139]

[134] McSurely v. McGrew, 140 Iowa, 163, 118 N. W. 415, 132 Am. St. Rep. 248. And see McFaddin v. Evans-Snider-Buel Co., 185 U. S. 505, 22 Sup. Ct. 758, 46 L. Ed. 1012. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[135] Pelo v. Stevens, 66 Misc. Rep. 35, 120 N. Y. Supp. 227. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[136] Windsor v. City of Des Moines, 110 Iowa, 175, 81 N. W. 476, 80 Am. St. Rep. 280. See Weitz v. Walter A. Wood Reaping & Mowing Mach. Co., 49 Neb. 434, 68 N. W. 613. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[137] Fuller v. City of Montpelier, 73 Vt. 44, 50 Atl. 544. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[138] Kearney County v. Taylor, 54 Neb. 542, 74 N. W. 965; Martin v. South Salem Land Co., 94 Va. 28, 26 S. E. 591. But see Steele County v. Erskine, 98 Fed. 215, 39 C. C. A. 173. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[139] Swartz v. Andrews, 137 Iowa, 261, 114 N. W. 888, 126 Am. St.

Statutes of this character are limited in their application. They are valid only where the fault to be cured arose from some irregularity, informality, or statutory disability which the legislature might have rendered immaterial or harmless by legislation in advance of the particular transaction, or from the want of some formality or ceremony which it might have dispensed with in advance.[140] Nor can a transaction be thus validated which was expressly forbidden by the constitution at the time of its occurrence.[141] And, further, it is well settled that retrospective curative acts cannot be allowed to interfere with rights of third persons vested at the time of their passage.[142] And even curative statutes will not be construed as retroactive if they are so expressed as to show that such was not the intention of the legislature. For instance, an act providing that "any act done by a notary public subsequently to the expiration of his term of office shall be as valid as if done during his term of office," will not retroact so as to make good an unauthorized acknowledgment of a deed taken before the statute was passed.[143] And it is held that a statute providing that "the contracts of any married woman made for

Rep. 285. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[140] Wright v. Johnson, 108 Va. 855, 62 S. E. 948; Single v. Marathon County Sup'rs, 38 Wis. 363; City of Redlands v. Brook, 151 Cal. 474, 91 Pac. 150; Board of Com'rs of Wells County v. Fahlor, 132 Ind. 426, 31 N. E. 1112; Cranor v. Volusia County Com'rs, 54 Fla. 526, 45 South. 455. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[141] Town of Walton v. Adair, 111 App. Div. 817, 97 N. Y. Supp. 868. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[142] McGehee v. McKenzie, 43 Ark. 156; Finders v. Bodle, 58 Neb. 57, 78 N. W. 480; Simmons v. Inhabitants of Hanover, 23 Pick. (Mass.) 188; McDowell v. Rockwood, 182 Mass. 150, 65 N. E. 65; Merchants' Bank of Danville v. Ballou, 98 Va. 112, 32 S. E. 481, 44 L. R. A. 306, 81 Am. St. Rep. 715; Thompson v. Morgan, 6 Minn. 292 (Gil. 199). *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[143] Bernier v. Becker, 37 Ohio St. 72. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

any lawful purpose shall be valid and binding" should be construed as prospective only, and not as applying to promissory notes made before its enactment.[144]

REPEALING ACTS

124. A repealing statute is generally to be construed retrospectively, in so much that any right or liability, right of action, penalty, or forfeiture which depended wholly on the repealed statute and did not exist at common law, and which had not passed into judgment at the time of the repeal, will be cut off and destroyed by the repeal, unless saved by a clause in the repealing act applicable thereto, or by a general statute having the same effect.

125. But many states now have general statutes abrogating this rule, and providing that the repeal of a statute shall not affect or impair any act done, right vested, duty imposed, penalty accrued, or proceeding commenced before the taking effect of the repealing act. These statutes are valid, and create a new rule of construction which is binding on the courts, and which must be applied in all cases except where it is evident that the effect would be to defeat the plain and manifest purpose of the legislature in the repealing statute.

In a number of cases the courts have been so much impressed with the harshness of the common-law rule above stated that they have restricted it within the narrowest possible bounds, or have even denied it utterly, holding that a repealing statute should have a prospective operation only, unless a contrary intention on the part of the legislature very plainly appears,[145] especially in instances where

[144] Bryant v. Merrill, 55 Me. 515. *See "Statutes," Dec. Dig. (Key No.) § 268; Cent. Dig. §§ 360, 361.*

[145] Morgan v. Chapple, 10 Kan. 216; Blakemore v. Cooper, 15 N. D. 5, 106 N. W. 566, 4 L. R. A. (N. S.) 1074, 125 Am. St. Rep. 574. And see Culpepper v. International & G. N. Ry. Co., 90 Tex. 627, 40

great injury and injustice would result from the application of the generally accepted rule.[146] Still it remains the settled rule, according to the preponderance of authority, that any right or privilege or right of action which did not exist at common law, but was dependent entirely upon a statute giving or creating it, will be lost or abrogated by the repeal of that statute, unless saved by a special provision in the repealing act.[147] And on the same principle, where the former statute gave a right of action for a penalty or forfeiture, it will be destroyed by the repeal of the statute (without a saving clause) unless prosecuted to final judgment before the repeal.[148] This applies not only to rights which yet rest in posse, but also to such as have actually been brought into suit. If the statute on which an action is based, or which gives the special remedy in process of

S. W. 386; Town of Wrentham v. Fales, 185 Mass. 539, 70 N. E. 936. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[146] Thacher v. Board of Sup'rs of Steuben County, 21 Misc. Rep. 271, 47 N. Y. Supp. 124. But this decision was reversed in 31 App. Div. 634, 53 N. Y. Supp. 1116. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[147] McNabb v. President, etc., of Village of Tonica, 103 Ill. App. 156; Taylor v. Strayer, 167 Ind. 23, 78 N. E. 236, 119 Am. St. Rep. 469; Moor v. Seaton, 31 Ind. 11; Crawford v. Halsted, 20 Grat. (Va.) 211. And see, generally, the other cases cited in this section. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[148] Commercial Union Assur. Co., Limited, of London v. Wolf, 8 Cal. App. 413, 97 Pac. 79; Westchester County v. Dressner, 23 App. Div. 215, 48 N. Y. Supp. 953; Pensacola & A. R. Co. v. State, 45 Fla. 86, 33 South. 985, 110 Am. St. Rep. 67. Within the meaning of this rule, a statute giving a right to recover of a person by civil action, either for the benefit of the public or in its name for the benefit of a private person, or in the name of the latter for his own use, a sum of money by way of punishment, is a penal statute, and rights under it do not survive a repeal thereof without a saving clause. Miller v. Chicago & N. W. R. Co., 133 Wis. 183, 113 N. W. 384. The same is true of a statute requiring railroads operating over inclosed lands to construct and maintain suitable and convenient farm crossings for the use of the occupants thereof, and providing a penalty for failure to comply, payable to the owner or occupant. Id. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

enforcement, is repealed after the suit is brought, the suit is abated, and all proceedings must stop where they are.[149] But if a judgment has been rendered before the taking effect of the repealing act, it cannot be affected thereby,[150] and it seems that this is also the case where a verdict has been rendered, and questions of law reserved, before the repeal, and judgment is thereafter entered in accordance with the verdict.[151] Also, where a right of action exists independent of statute, and a statute is enacted prescribing a condition constituting an additional element of the matter out of which the right of action arises, the repeal of the statute after the right of action accrued and prior to the trial will not affect its application to such action; and this rule is applicable to actions sounding in tort, as well as to those arising out of contract.[152]

If the section or part of the old statute which gave the right, right of action, or penalty is verbally or substantially re-enacted in the repealing act, there is technically no moment of time when the repealed section was not the law, and hence that portion of the repealing act is to be construed as a continuation of the provisions previously in force and not as a new enactment; from which it results that, even in the absence of a saving clause, the repeal does not destroy or affect existing rights of action or pending suits.[153]

[149] Curran v. Owens, 15 W. Va. 208; Stewart v. Lattner (Tex. Civ. App.) 116 S. W. 860; Jessee v. De Shong (Tex. Civ. App.) 105 S. W. 1011. But if the repeal of the statute does not destroy rights of action created by it, it will not affect pending suits. Burns v. Hays, 44 W. Va. 503, 30 S. E. 101. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[150] Curran v. Owens, 15 W. Va. 208. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[151] Inhabitants of Springfield v. Inhabitants of Worcester, 2 Cush. (Mass.) 52. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[152] James v. Oakland Traction Co., 10 Cal. App. 785, 103 Pac. 1082. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[153] Curran v. Owens, 15 W. Va. 208; Jockers v. Borgman, 29 Kan. 109, 44 Am. Rep. 625; Merkle v. Bennington Tp., 68 Mich. 133, 35

An express saving clause in a repealing statute is not required in order to prevent the destruction of rights existing under the former statute, if the intention to preserve and continue such rights is otherwise clearly apparent.[154] Thus, if it can be gathered from any act on the same subject passed by the legislature at the same session that it was the legislative intent that pending proceedings should be saved, it will be sufficient to effect that purpose.[155] Even the general public policy of the state, as manifested and continued in operation for a long term of years and by various statutes, may be appealed to in this behalf, and while it will not prevail over a clear and distinct enactment, nor perhaps be sufficient absolutely to supply the place of a saving clause, yet it may go far to explain any ambiguous language in such a clause.[156]

Impressed with the harsh and injurious operation of this rule of the common law, many states have now abrogated it by statute. This has frequently been done on the adoption of a code of laws or revision of the statutes, for the purpose of saving rights accrued and actions pending under the separate statutes so codified or compiled and technically repealed by the adoption of the new body of laws.[157] But there are also, in several states, general laws on this subject, applicable to all statutes thereafter to be passed, and saving from the effect of any future repealing act rights or causes of action, and pending suits, accrued or begun

N. W. 846; Alexander v. City of Big Rapids, 70 Mich. 224, 38 N. W. 227; Moore v. Kenockee Tp., 75 Mich. 332, 42 N. W. 944, 4 L. R. A. 555. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[154] Gorley v. Sewell, 77 Ind. 316; Commonwealth v. Mortgage Trust Co. of Pennsylvania, 227 Pa. 163, 76 Atl. 5. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[155] Baltimore & O. R. Co. v. Pittsburg, W. & K. R. Co., 17 W. Va. 812. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[156] Blackwood v. Van Vleit, 30 Mich. 118. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[157] See, for example, Code of Laws D. C. 1901, § 1638, and Gwin v. Brown, 21 App. D. C. 295. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

under the repealed act, and also, generally, penalties and forfeitures, and rights of action therefor, previously accrued or vested.[158] These statutes are not invalid as an attempt to limit or restrict the power of succeeding legislatures, but they prescribe a new rule of construction, binding upon the courts, as a substitute for the common-law rule with respect to the effect of repealing statutes.[159] But as they rest generally upon the authority of the legislature, and not upon the constitution, they are, of course, subject to repeal, either in general or pro re nata. Hence a general saving act of this character will not be held to apply where, either from an express declaration in a particular repealing statute, or from a consideration of its terms as a whole, it is evident that the purpose and intention of the legislature would be frustrated by allowing the general saving act to

[158] See Rev. St. U. S. § 13 (U. S. Comp. St. 1901, p. 6); Great Northern Ry. Co. v. United States, 208 U. S. 452, 28 Sup. Ct. 313, 52 L. Ed. 567; United States v. Chicago, St. P., M. & O. R. Co. (D. C.) 151 Fed. 84; United States v. Standard Oil Co. (D. C.) 148 Fed. 719; Murphy v. Utter, 186 U. S. 95, 22 Sup. Ct. 776, 46 L. Ed. 1070 (Construing Rev. St. Ariz. 1887, par. 2934, § 7); Code Civ. Proc. Cal. § 18; Kelly v. Larkin, 47 Cal. 58; Laws Colo. 1891, p. 366, § 1; Cavanaugh v. Patterson, 41 Colo. 158, 91 Pac. 1117; Pensacola & A. R. Co. v. State, 45 Fla. 86, 33 South. 985, 110 Am. St. Rep. 67 (construing Const. Fla. 1885, art. 3, § 32); Rev. St. Ill. 1874, c. 131, § 4; Chicago, P. & St. L. Ry. Co. v. People, 136 Ill. App. 2; Burns' Ann. St. Ind. 1894, § 248; Starr v. State ex rel. Ketcham, 149 Ind. 592, 49 N. E. 591; City of Indianapolis v. Morris, 25 Ind. App. 409, 58 N. E. 510; Gen St. Kan. 1901, § 7342; Denning v. Yount, 9 Kan. App. 708, 59 Pac. 1092; Rev. St. Mo. 1889, §§ 6596, 6598; Bell v. McCoy, 136 Mo. 552, 38 S. W. 329; 1 Gen. St. N. J. 1895, p. 3194, § 3; Laws N. Y. 1892, c. 677, § 31; City of New York v. Herdje, 68 App. Div. 370, 74 N. Y. Supp. 104; Code N. C. § 3764; City of Wilmington v. Cronly, 122 N. C. 383, 30 S. E. 9; Rev. St. Wis. 1878, § 4974; H. W. Wright Lumber Co. v. Hixon, 105 Wis. 153, 80 N. W. 1110. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[159] United States v. Chicago, St. P., M. & O. Ry. Co. (D. C.) 151 Fed. 84; United States v. Standard Oil Co. (D. C.) 148 Fed. 719; Gilleland v. Schuyler, 9 Kan. 569; Thacher v. Board of Sup'rs of Steuben County, 21 Misc. Rep. 271, 47 N. Y. Supp. 124. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

govern.[160] This is also the case where a particular repealing statute contains its own saving clause. The insertion of such a clause will be taken as a legislative declaration that rights, actions, penalties, etc., not mentioned in it, are not to be saved from the effect of the repealing act, and it will be immaterial that such rights or actions may be included in the general statute.[161] As to the construction of such general laws, it is held that one which provides that the repeal of any statute shall not release any "penalty, forfeiture, or liability" incurred thereunder includes fines and imprisonment for violations of penal statutes.[162] But a constitutional provision that the repeal of a statute shall not affect the prosecution of any crime committed before such repeal does not apply to a civil suit for the recovery by the state of a penalty imposed by a statute for an act which is not denounced or punishable as a crime.[163] So, where the saving act extends to "any right already existing or any action or proceeding already taken," a motion for a new trial is not saved, not being a "right."[164] Nor does such a statute save the right to try a pending cause under a rule of evidence established by a repealed statute.[165]

[160] Great Northern Ry. Co. v. United States, 208 U. S. 452, 28 Sup. Ct. 313, 52 L. Ed. 567; Cortelyou v. Anderson, 73 N. J. Law, 427, 63 Atl. 1095. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[161] Palmer v. Hickory Grove Cemetery, 84 App. Div. 600, 82 N. Y. Supp. 973. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[162] State v. Hardman, 16 Ind. App. 357, 45 N. E. 345. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[163] Pensacola & A. R. Co. v. State, 45 Fla. 86, 33 South. 985, 110 Am. St. Rep. 67. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[164] Kelly v. Larkin, 47 Cal. 58. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

[165] Wheelock v. Myers, 64 Kan. 47, 67 Pac. 632. And see Ensley v. State (Okl. Cr. App. 1910) 109 Pac. 250, to the effect that a constitutional provision that the repeal of a statute shall not affect any accrued right or proceeding begun by virtue of such repealed statute, does not apply to mere changes in the law of procedure. *See "Statutes," Dec. Dig. (Key No.) §§ 272–277; Cent. Dig. §§ 365–375.*

CHAPTER XI

CONSTRUCTION OF PROVISOS, EXCEPTIONS, AND SAVING CLAUSES.

126–128. Definitions.
129. Office of Proviso.
130. Proviso Limited to Preceding Matter.
131. Construction of Provisos.
132. Repugnant Provisos and Saving Clauses.

DEFINITIONS

126. A proviso is a clause added to a statute, or to a section or part thereof, which introduces a condition or limitation upon the operation of the enactment, or makes special provision for cases excepted from the general provisions of the law, or qualifies or restrains its generality, or excludes some possible ground of misinterpretation of its extent.[1]

127. An exception in a statute is a clause similar to a proviso. Specifically, it excepts from the operation of the statute persons, things, or cases which would otherwise have been included in it.

128. A saving clause in a statute is an exemption of a special thing out of the general things mentioned in the enactment. More particularly, it exempts existing rights or causes of action or pending proceedings from the operation of a statute which otherwise would change or destroy them.

Provisos

A proviso is commonly found at the end of the act or section to which it applies, and it is usually introduced by the word "provided." This, however, is not necessary to

[1] Minis v. United States, 15 Pet. 445, 10 L. Ed. 791; In re Matthews (D. C.) 109 Fed. 614; Carroll v. State, 58 Ala. 396; Waffle v. Goble, 53 Barb. (N. Y.) 522. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

determine its character. "It does not necessarily follow that because the term 'provided' is used, that which may succeed it is a proviso, though that is the form in which an exception is generally made to, or a restraint or qualification imposed on, the enacting clause. It is the matter of the succeeding words, and not the form, which determines whether it is or not a technical proviso." [2] So, also, the position of a limiting or restraining clause is not an invariable test of its character as a proviso. Though a proviso is ordinarily placed immediately after the clause or section which it is to restrain, yet words of an appropriate character to fulfill the office of a proviso may apply to the whole of a section, or to an entire enactment, no matter where they appear.[3] The proviso is a subsidiary and dependent part of the statute, or of the section to which it is appended. Hence, when a statute with a proviso is repealed, the proviso will fall with the statute; it will not continue in force as an independent enactment.[4] But in interpreting a section of a statute which remains in force, resort may be had to a proviso to it, although the proviso has been repealed.[5]

Exceptions

An exception is commonly incorporated in the body of the act or section which it modifies. It is frequently (but not necessarily) introduced by the word "except." For example, in the Constitution of the United States it is provided: "Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives shall be necessary, except on a question of adjournment, shall be presented to the President." Again, if an excise law provides that it shall be a misdemeanor for "any person not

[2] Carroll v. State, 58 Ala. 396. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[3] King's Lake Drainage & Levee Dist. v. Jamison, 176 Mo. 557, 75 S. W. 679; United States v. R. F. Downing & Co., 146 Fed. 57, 76 C. C. A. 376. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[4] Church v. Stadler, 16 Ind. 463. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[5] Bank for Savings v. The Collector, 3 Wall. 495, 18 L. Ed. 207. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

being a licensed retailer" to sell liquor, the exemption of persons holding licenses is properly an exception. When the terms are used with technical precision, the distinction between a proviso and an exception is this: an exception exempts absolutely from the operation of an enactment, while a proviso defeats its operation conditionally. An exception takes out of an enactment something which would otherwise be part of the subject-matter of it; a proviso avoids it by way of defeasance or excuse.[6] There is also a well-known distinction between an exception in the purview of the act and a proviso, in this respect: If there be an exception in the enacting clause of a statute, it must be negatived in pleading, but a separate proviso need not be, and that, although it is found in the same section of the act, if it be not referred to and engrafted on the enacting clause.[7] This is a rule of pleading and is not properly germane to the subject of construction, but is mentioned here as illustrating some of the differences between provisos and exceptions.

Saving Clauses

A saving clause is usually placed at or near the end of the act, and is most commonly introduced by the words "nothing in this act shall be held," etc. Such clauses are often found in repealing statutes, where their specific use is to exempt from the effect of the repeal proceedings in-

[6] Waffle v. Goble, 53 Barb. (N. Y.) 517, 522. And see Campbell v. Jackman Bros., 140 Iowa, 475, 118 N. W. 755, 27 L. R. A. (N. S.) 288. An exception of a particular thing from the general words of a statute tends to show that it was the opinion of the legislature that the thing excepted would have been within the general words if the exception had not been made. Schuyler v. Southern Pac. Co. (Utah) 109 Pac. 458. But the technical distinction between exceptions and provisos is now but little regarded; they serve a similar and practically identical purpose. State v. Barrett, 172 Ind. 169, 87 N. E. 7. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[7] Sedgwick, Stat. Constr. (2d Ed.) 50; Trustees of First Baptist Church in City of Schenectady v. Utica & S. R. Co., 6 Barb. (N. Y.) 313; Vavasour v. Ormrod, 6 Barn. & C. 430; Commonwealth v. Louisville & N. R. Co., 140 Ky. 21, 130 S. W. 798. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

augurated or rights vested under the law to be repealed.[8] For example, ordinarily, a right to a statutory penalty or forfeiture may be destroyed at any time before a recovery has been had, by the repeal of the law which gave it. But if it is desired to make an exception in favor of those who had already begun their actions when the repealing act is passed, this may be done by a saving clause. So also, when a new act makes changes in the jurisdiction of the courts, or in the rules of practice or evidence, a saving clause is often introduced in order to except from the operation of the act proceedings which may be pending and undetermined at the time of its passage. When a new statute on the same subject as a prior one repeals the former law, with a saving clause in the repealing section as to existing suits or litigation, the saving in such case is in legal effect a limitation on the repealing clause, and operates to continue in force the old law as to existing suits or proceedings.[9]

OFFICE OF PROVISO

129. The proper office of a proviso is to limit or restrict the preceding section or part of the statute, not to expand or enlarge it or to introduce new provisions. But it must be held to enlarge the scope of the act, or even to take on the character of a separate and independent enactment, if that is in accordance with the evident purpose of the legislature.

The primary and usual office of a proviso is to put a limitation or restraint upon the general language employed in the statute, or to except or reserve out of the effect of

[8] State ex rel. Crow v. St. Louis, 174 Mo. 125, 73 S. W. 623, 61 L. R. A. 593; Clark Thread Co. v. Inhabitants of Kearny Tp., 55 N. J. Law, 50, 25 Atl. 327; Baxter v. Hamilton, 20 Mont. 327, 51 Pac. 265; In re Schneck, 78 Kan. 207, 96 Pac. 43; Brookman v. State Ins. Co., 15 Wash. 29, 45 Pac. 655. On the office and construction of saving clauses in repealing acts, see supra, p. 424. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[9] Dobbins v. First Nat. Bank of Peoria, 112 Ill. 553. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

the statute something which otherwise would be within it; it cannot, when properly and strictly used, enlarge or extend the section or act of which it is a part, nor add anything to the body of the law, nor operate as a substantive enactment.[10] It is said that a proviso in a statute cannot confer a power.[11] Rather it operates as a limitation upon a power granted in the body of the act, or as a denial of power or authority beyond the restricted limits which it prescribes.[12] Or, according to another proper use of a proviso, it may be introduced from excessive caution, and designed to prevent a possible misinterpretation of the statute by including therein something which was not meant to be included.[13]

But, as legislatures seldom use provisos with strict propriety, the technical rule above stated can seldom be applied in all its severity. The modern doctrine is that, while it is proper to keep in mind the appropriate function of a proviso, yet its actual purpose and effect are to be determined by the language employed, by the context, and by the intention of the legislature as discerned from a study of the act as a whole and all its parts.[14] To fulfill this intention, when plainly manifest, a proviso may and should be so construed as to extend or enlarge the scope of the act, to introduce new substantive provisions, or even to assume the character and office of a separate and independent

[10] Deitch v. Staub, 115 Fed. 309, 53 C. C. A. 137; Tsutakawa v. Kumamoto, 53 Wash. 231, 101 Pac. 869; In re Day, 181 Ill. 73, 54 N. E. 646, 50 L. R. A. 519; Brown v. Patterson, 224 Mo. 639, 124 S. W. 1; Stiers v. Mundy (Ind. App.) 89 N. E. 959; State v. Twin City Telephone Co., 104 Minn. 270, 116 N. W. 835; Matter of Webb, 24 How. Prac. (N. Y.) 247; In re Hoss' Estate (Wash.) 109 Pac. 1071. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[11] Commonwealth ex rel. Wallace v. Hough, 22 Pa. Co. Ct. R. 440. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[12] Kensington Dist. Com'rs v. Keith, 2 Pa. 218. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[13] Baggaley v. Pittsburg & Lake Superior Iron Co., 90 Fed. 636, 33 C. C. A. 202. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[14] Traders' Nat. Bank v. Lawrence Mfg. Co., 96 N. C. 298, 3 S. E. 363. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

enactment.[15] It is said that this larger and wider rule is especially appropriate to be applied to such complex structures as tariff laws and appropriation acts.[16]

PROVISO LIMITED TO PRECEDING MATTER

130. The natural and appropriate office of a proviso to a statute, or to a section thereof, is to restrain or qualify the provisions immediately preceding it. Hence it is a rule of construction that it will be confined to that which directly precedes it, or to the section to which it is appended, unless it clearly appears that the legislature intended it to have a wider scope.[17]

Although, as just stated, the appropriate function of a proviso in a statute is to restrain or modify the enacting clause, and it should be confined to what precedes it, yet

[15] National Bank of Commerce v. Cleveland (D. C.) 156 Fed. 251; Prindle v. United States, 41 Ct. Cl. 8; Hall's Safe Co. v. Herring-Hall-Marvin Safe Co., 31 App. D. C. 498; Stephen v. Illinois Cent. R. Co., 128 Ill. App. 99; Propst v. Southern R. Co., 139 N. C. 397, 51 S. E. 920. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[16] United States v. R. F. Downing & Co., 146 Fed. 56, 76 C. C. A. 376; National Bank of Commerce v. Cleveland (D. C.) 156 Fed. 251. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[17] United States v. Bernays, 158 Fed. 792, 86 C. C. A. 52; Rawls v. Doe ex dem. Kennedy, 23 Ala. 240, 48 Am. Dec. 289; Pearce v. Bank of Mobile, 33 Ala. 693; Carroll v. State, 58 Ala. 396; Spring v. Collector of City of Olney, 78 Ill. 101; Hackett v. Chicago City R. Co., 235 Ill. 116, 85 N. E. 320; Advisory Board of Coal Creek Tp., Montgomery County, v. Levandowski (Ind. App.) 84 N. E. 346; Gast v. Board of Assessors, 43 La. Ann. 1104, 10 South. 184; Cushing v. Worrick, 9 Gray (Mass.) 382; Sullivan v. Bailey, 125 Mich. 104, 83 N. W. 996; State ex rel. Phillips v. Webber, 96 Minn. 348, 105 N. W. 68; State ex rel. Crow v. St. Louis, 174 Mo. 125, 73 S. W. 623, 61 L. R. A. 593; Propst v. Southern R. Co., 139 N. C. 397, 51 S. E. 920; Leader Printing Co. v. Nicholas, 6 Okl. 302, 50 Pac. 1001; Lehigh County v. Meyer, 102 Pa. 479; Callaway v. Harding, 23 Grat. (Va.) 542; Stiers v. Mundy (Ind.) 92 N. E. 374; People v. McMurray, 147 Ill. App. 248. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

when, from the context, and from a comparison of all the provisions relating to the same subject-matter, it is manifest that the object and intent were to give the proviso a scope extending beyond the section, and an effect beyond the phrase immediately preceding, it will be construed as restraining and qualifying preceding sections relating to the subject-matter of the proviso, or as tantamount to an enactment in a separate section, without regard to its position and connection.[18] Hence the proviso may qualify the whole or any part of the act, or it may stand as an independent proposition or rule, if such is clearly seen to be the meaning of the legislature as disclosed by an examination of the entire enactment.[19] From the character or purpose of a proviso, it may even be evident that it was intended to qualify statutes which might thereafter be passed, being designed as a substantive rule of law or a continuing limitation in a class of cases. Thus, in a case in Maryland, the charter of a city granted certain powers to the mayor and council, with the following proviso: "That they shall not have power to pledge the credit or faith of the city for any sum exceeding $10,000, without first submitting the question to the voters of said city." A subsequent statute authorized them to issue bonds of the city for the purpose of building a public bridge, and to levy and collect extraordinary taxes to pay the bonds and the interest thereon. It was held that the power thus given was subject to the proviso in the charter. It was said that the proviso, being engrafted upon the effective part of the charter, was a com-

[18] Wartensleben v. Haithcock, 80 Ala. 565, 1 South. 38; Appeal of Mechanics' & Farmers' Bank, 31 Conn. 63; Friedman v. Sullivan, 48 Ark. 213, 2 S. W. 785; King v. Inhabitants of Threlkeld, 4 Barn. & Ad. 229; King v. Inhabitants of Newark-upon-Trent, 3 Barn. & C. 59; United States v. R. F. Downing, 146 Fed. 56, 76 C. C. A. 376; United States v. Scruggs, Vandervoort & Barney Dry Goods Co., 156 Fed. 940, 84 C. C. A. 440; People v. McMurray, 147 Ill. App. 248; Stiers v. Muudy (Ind.) 92 N. E. 374; State ex rel. Bullard v. Searle, 86 Neb. 259, 125 N. W. 590. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[19] United States v. Babbit, 1 Black, 55, 17 L. Ed. 94; Carter, Webster & Co. v. United States, 143 Fed. 256, 74 C. C. A. 394. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

prehensive and definite restriction upon the exercise of any power to pledge the faith or credit of the city beyond the limited sum, and that the effect of the later statute was merely to place the powers thereby granted among those previously granted, subject to all the conditions and limitations imposed by the original law. To preserve a restrictive proviso of this character, the court said, liberal application would be made of the settled rules of construction that repeals by implication are disfavored, that apparently contradictory statutes shall stand together if by interpretation they may, and that when two laws only so far differ or disagree as that by any other construction they may both stand together, the latter is no repeal of the former.[20] As a rule, however, and unless the contrary intent is clearly apparent, the proviso is to be strictly limited. Thus, in another case, it appeared that the charter of a bank was to continue in force until 1859, and allowed it to take seven per cent. discount. In 1852, the legislature passed an act to extend the privileges of the bank for twenty years beyond the expiration of its charter, with a proviso that it should not take more than six per cent. It was held that this proviso applied only to the privileges granted by the extension, and did not affect loans made while the original charter was in force.[21]

CONSTRUCTION OF PROVISOS

131. A proviso in a statute, where the enacting clause is general in its terms and objects, must ordinarily be construed strictly.

On the principle of interpreting a statute in such a manner as to give effect to each and every part of it, a proviso must be so construed as to give to the statute an effect dif-

[20] Mayor, etc., of City of Cumberland v. Magruder, 34 Md. 381. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[21] Pearce v. Bank of Mobile, 33 Ala. 693. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

ferent from that which it would have without the proviso.[22] And the general rule is that: "Where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause; and those who set up any such exception must establish it as being within the words as well as within the reason thereof." [23] For example, an act of Congress limited the liability of shipowners for loss or damage to merchandise carried by them caused by fires. One of the sections (being in the nature of an exception or proviso) provided that the act should not apply to the owners of vessels "used in rivers or inland navigation." A question arose as to whether the act was applicable to a case where the vessel was employed in navigating the Great Lakes. The court held that the owner could claim the benefit of the act. This was, in effect, construing the statute liberally (as it was remedial) and giving a strict construction to the exception, which removed certain cases from its operation.[24] Again, an act regulating actions against sheriffs for not returning executions declared that "all rights of action secured by existing laws may be prosecuted in the manner provided in this act," and repealed inconsistent provisions. It was held that the damages were to be regulated by this act, although the right

[22] Quackenbush v. United States, 33 Ct. Cl. 355; Markee v. People, 103 Ill. App. 347. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[23] United States v. Dickson, 15 Pet. 141, 10 L. Ed 689; Roberts v. Yarboro, 41 Tex. 449; Bragg v. Clark, 50 Ala. 363; McRae v. Holcomb, 46 Ark. 306; Looker v. Davis, 47 Mo. 140; Epps v. Epps, 17 Ill. App. 196; Appeal of Clark, 58 Conn. 207, 20 Atl. 456; State v. Twin City Telephone Co., 104 Minn. 270, 116 N. W. 835; Towson v. Denson, 74 Ark. 302, 86 S. W. 661; Futch v. Adams Bros., 47 Fla. 257, 36 South. 575; State v. Brady, 102 Tex. 408, 118 S. W. 128; Ditto v. Geoghegan, 1 Metc. (Ky.) 169. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[24] Moore v. American Transportation Co., 24 How. 1, 16 L. Ed. 674. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

of action accrued before.[25] So, where a municipal ordinance forbidding the sale of fresh meat within certain limits, except by licensed persons, contains a proviso in favor of farmers, authorizing them to sell meats which are the produce of their own farms, one who follows the business of a butcher and sells meats without a license, is not within the proviso, although his meats come from his farm, if the farm is only an appendage to his business as a butcher.[26] A proviso to a statute declaring that the act shall not be held to affect any "contracts" theretofore made does not apply to a proposal for a loan, though the negotiations therefor had been pending for some time, and the papers had been drawn and the draft signed, where the papers were not executed nor the draft delivered, nor the proceedings approved, until after the act went into effect.[27] So an exception to an authority granted by one section of a statute cannot be held to qualify another and different authority granted by another section in unqualified terms.[28]

But this rule is not invariably applicable. There are cases in which a proviso to a statute should be liberally construed. This is the case when it is necessary to extend the proviso to persons or cases which come within its equity, though not its strict letter, in order to effectuate justice or secure the benefits or remedies which the proviso had in contemplation, and especially when the statute is penal in its nature.[29] For example, a statute of Pennsylvania declared that any money or thing bet on the result of an election should be forfeited to the directors of the poor, "provided that suit is brought within two years from the time

[25] Collier v. State ex rel. Lewis, 10 Ind. 58. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[26] Trustees of Rochester v. Pettinger, 17 Wend. (N. Y.) 265. *See "Statutes," Dec. Dig. (Key. No.) § 228; Cent. Dig. § 310.*

[27] United States Saving & Loan Co. v. Miller (Tenn. Ch. App.) 47 S. W. 17. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[28] Fleming v. Potter, 14 Ind. 486. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[29] Bank of United States v. McKenzie, 2 Brock. 393, Fed. Cas. No. 927. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

of making such bet." It was held that the proviso operated as a condition and not as a statute of limitations which must be pleaded against a suit by the directors. It will be observed that the forfeiture here was in the nature of a penalty and the statute was therefore a penal act. It followed that the statute must be construed strictly and the proviso liberally. The construction given to the proviso in this case was liberal, because if it had been held a statute of limitations, the right of the directors to recover would not be cut off in two years unless the lapse of time were pleaded and proven.[30] Again, an act of the legislature which disposes of state property, excepting that portion "known as the government reservation," will except all lands known by that name, whether the reservation had any legal existence or not.[31] So, where a statute changing school districts saved rights in favor of parties holding contracts, obligation rights, or liens, it was held that a right of action for trespass in taking a building for a schoolhouse was saved.[32] Where a city ordinance appropriated money for the ensuing year but before the issue of warrants, an act of the legislature amended the city charter, restricting its right to make appropriations, but providing that nothing in the act should in any measure affect or impair any proceeding had under previous existing acts, or any rights or privileges acquired thereunder, it was held that the city auditor was bound to issue the warrants according to the terms of the ordinance.[33] Where a criminal statute is changed between the time of the commission of an offense and a conviction therefor, but the later act contains a saving clause, to the effect that it shall not apply to the trial of offenses committed prior to the amending act, the punishment of the prisoner

[30] Forscht v. Green, 53 Pa. 138. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[31] People ex rel. Burr v. Dana, 22 Cal. 11. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[32] Gould v. Subdistrict No. 3 of Eagle Creek School Dist., 7 Minn. 203 (Gil. 145). *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[33] Beatty v. People ex rel. Republican Pub. Co., 6 Colo. 538. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310*

must be regulated by the old law.[34] Where a repealing statute contains a special saving clause, the general saving clause of the general statutes has no application, and no rights or remedies will be saved except such as are saved by the special saving clause.[35]

The introduction of an exception or saving clause may have an important bearing on the construction of the enacting part of the statute, for it may show it to be more comprehensive than would appear merely from the words used, on the principle that when certain exceptions are specified, no others are intended. This rule is alike applicable to grants inter partes and to public laws. Thus, it is said: "When first there are general words, and after, an exception of some particular, all that is not within the particular shall be within the general; what is not excepted is within the grant; and this rule holds where the general words by themselves will not pass a thing; there by intendment of the exception they shall pass. As if a man grant all trees, yet fruit trees do not pass; but a grant of all trees except apple trees will pass all other kinds of fruit trees." [36] When, by a declaratory provision, the legislature enacts that a thing may be done, which before that time was lawful, and adds a proviso that nothing therein contained shall be so construed as to permit some other matter embraced in the general provision to be done, this is an implied prohibition of such act, though before that time it was lawful.[37]

[34] People v. Gill, 7 Cal. 356. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[35] State v. Showers, 34 Kan. 269, 8 Pac. 474. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[36] Viner's Abr. "Grants," H. 13, 61. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

[37] State v. Eskridge, 1 Swan (Tenn.) 413. *See "Statutes," Dec. Dig. (Key No.) § 228; Cent. Dig. § 310.*

REPUGNANT PROVISOS AND SAVING CLAUSES

132. A saving clause which is repugnant to the enacting part of the statute is void; but a proviso which is repugnant to the purview of the act will override and control the latter.

It is well settled that a saving clause in a statute which is inconsistent with the body of the act is to be rejected and disregarded as void and of no effect.[38] As an example of this rule Blackstone cites the following: "If an act of Parliament vests lands in the king and his heirs, saving the rights of all persons whatsoever, or vests the land of A. in the king, saving the right of A., in either of these cases the saving is totally repugnant to the body of the statute, and, if good, would render the statute of no effect or operation; and therefore the saving is void, and the land vests absolutely in the king." [39] And a saving clause in a general act has no operation if it is inconsistent with the express provisions of a subsequent special act.[40] On the other hand, if a proviso in a statute is directly contrary to the purview of the statute, the proviso is good and not the purview; the proviso must stand as the last expression of the legislative will.[41] In one of the earliest cases applying this rule, it was said: "Where the proviso of an act of Parliament is

[38] Case of Alton Woods, 1 Coke, 40b, 47a; Walsingham's Case, 2 Plowd. 547, 565; Jackson v. Moye, 33 Ga. 296. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[39] 1 Bl. Comm. 89. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[40] Corporation of Yarmouth v. Simmons, L. R. 10 Ch. Div. 518. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[41] Townsend v. Brown, 24 N. J. Law, 80; White v. Nashville & N. W. R. Co., 7 Heisk. (Tenn.) 518; Waffle v. Goble, 53 Barb. (N. Y.) 517, 522; Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53; State v. Barrett, 172 Ind. 169, 87 N. E. 7; Campbell v. Jackman Bros., 140 Iowa, 475, 118 N. W. 755, 27 L. R. A. (N. S.) 288; Van Horn v. State, 46 Neb. 62, 64 N. W. 365. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

directly repugnant to the purview, the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers; and it was compared at the bar to a will, in which the latter part, if inconsistent with the former, shall supersede and revoke it." [42] The distinction between provisos and saving clauses, in this respect, is thus explained in a case in New York: "It is said the second section should be regarded as a saving clause or a proviso, and that, if repugnant to the purview of the act, it is void. There is a distinction between the effect of a repugnant saving clause and a repugnant proviso. Whether any sound reason exists for the distinction or not, it seems to be recognized as a settled rule. A saving clause is only an exception of a special thing out of the general things mentioned in the statute, and, if repugnant to the purview, is void. The office of a proviso is more extensive. It is used to qualify or restrain the general provisions of the act, or to exclude any possible ground of interpretation as extending to cases not intended by the legislature to be brought within its purview: and if repugnant to the purview it is not void, but stands as the last expression of the legislature." [43] Hence, for example, where the statute forbids the doing of a certain act, except upon a condition precedent which it is impossible to perform, the condition is valid and the prohibition absolute. So, if the statute forbids the doing of the act without a license, and provides that no license shall issue therefor, this would prohibit the act entirely.[44] But it is held that a saving clause, if in the form of a proviso, restricting the operation of the general language of the enacting clause, is not void because the language of the two clauses is repugnant.[45]

[42] Attorney General v. Governor, etc., of Chelsea Waterworks, Fitzgibbon, 195. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[43] Farmers' Bank of Fayetteville v. Hale, 59 N. Y. 53. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[44] State v. Douglass, 5 Sneed (Tenn.) 608. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[45] Savings Institution v. Makin, 23 Me. 360. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

The distinction drawn between saving clauses and provisos, in this particular, has been much criticised. It is certainly no longer true that the mere position of the proviso at the end of the statute, or of the section, shows it to be a later or reconsidered expression of the meaning of the legislative body. And on principle, it is difficult to see why a subordinate or subsidiary provision, whether in the nature of a saving or a proviso, should not be disregarded if its retention would destroy the effect of the main features of the enactment. On this point, Kent speaks as follows: "There is a distinction in some of the books between a saving clause and a proviso in the statute, though the reason of the distinction is not very apparent. * * * It may be remarked that a proviso repugnant to the purview of the statute renders it equally nugatory and void as a repugnant saving clause, and it is difficult to see why the act should be destroyed by the one and not by the other, or why the proviso and the saving clause, when inconsistent with the body of the act, should not both of them be equally rejected." [46] There are also some few cases to be found in the books, which have been decided in accordance with this more reasonable rule.[47] Thus, in a case in Pennsylvania, it was said that the distinction laid down in the earlier reports, between a saving clause and a proviso, was never founded in right reason, was no longer tenable, and had been rejected by good authority, and it was consequently

[46] 1 Kent, Comm. 463. But compare the following: "Considering the particular natures of saving clauses and provisos, we shall practically find that, since a saving clause is only an exemption of a special thing out of the general things mentioned in the purview, if it stands and the purview is rejected, the whole statute is destroyed, not even the saving clause itself being of any effect. Hence necessarily it must yield to the purview. But a proviso is somewhat different, and under various circumstances it may prevail over the purview without working the destruction of the entire enactment. When this is so, the question of precedence cannot be one of rule, but it must depend on considerations special to the individual case." Bishop, Wr. Laws, § 65.

[47] Penick v. High Shoals Mfg. Co., 113 Ga. 592, 38 S. E. 973; Gist v. Rackliffe-Gibson Const. Co., 224 Mo. 369, 123 S. W. 921. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

held that a proviso repugnant to the enacting clause of the statute was void.[48] And so, in a decision of the Supreme Court of that state, it was intimated that the true principle is that a proviso inconsistent with the purview of the statute is to be treated as void, though at the same time it was held that this did not apply to an act constituting a private corporation; for any ambiguity in such an act must be taken against the corporation and in favor of the public.[49] It is also said that a proviso which is so obscurely or defectively worded as to be entirely unintelligible or devoid of meaning will be disregarded, but its invalidity will not affect the other provisions of the statute.[50]

The courts will always endeavor, if it be possible, to put such a construction upon a proviso or a saving clause as will remove any apparent inconsistency with the main body of the act.[51] The Supreme Court of Ohio, speaking of the rule that a repugnant proviso nullifies the body of the act, says: "It is a rule of necessity and of last resort. To apply it in any case is to stultify the legislature." Hence repugnancy will be avoided by construction if possible.[52] Thus, to avoid any repugnancy, the terms of a proviso may be limited by the general scope of the enacting clause.[53] There are also cases in which it may be feasible to construe the proviso as merely suspending the operation of the statute until such time as the inconsistency shall be removed. For example, a statute of Texas changed the time of holding the district courts in a certain district, and, in an emergency

[48] In re District Court of Lancaster, 4 Clark, 501. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[49] Dugan v. Bridge Co., 27 Pa. 303, 67 Am. Dec. 464. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[50] Paterson Ry. Co. v. Grundy, 51 N. J. Eq. 213, 26 Atl. 788. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[51] State v. Weller, 171 Ind. 53, 85 N. E. 761. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[52] Renner v. Bennett, 21 Ohio St. 431; Dollar Savings Bank v. United States, 19 Wall. 227, 22 L. Ed. 80; Ihmsen v. Monongahela Nav. Co., 32 Pa. 153; Folmer's Appeal, 87 Pa. 133. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

[53] Treasurer of Vermont v. Clark, 19 Vt. 129. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

clause, was declared to take effect from its passage. But there was a proviso which required that the first term should be held in a designated county, and this, under certain other provisions of the act, could not be done until six months afterwards. It was held that the antecedent act controlling the subject remained in force until such term could be held.[54]

[54] Graves v. State, 6 Tex. App. 228. *See "Statutes," Dec. Dig. (Key No.) §§ 207, 228; Cent. Dig. §§ 284, 310.*

CHAPTER XII

STRICT AND LIBERAL CONSTRUCTION

133–134. General Principles.
135–137. Penal and Criminal Statutes.
138. Statutes Against Common Right.
139. Laws Authorizing Summary Proceedings.
140. Remedial Statutes.
141. Statutes Regulating Procedure.
142. Statutes Against Frauds.
143. Legislative Grants.
144. Laws Authorizing Suits Against the State.
145. Revenue and Tax Laws.
146. Statutes of Limitation.

GENERAL PRINCIPLES

133. Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case.

134. Liberal construction, on the other hand, expands the meaning of the statute to embrace cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used; it resolves all reasonable doubts in favor of the applicability of the statute to the particular case.

A "strict" construction of a statute is a construction of it according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations

or implications.[1] Looked at from another point of view, it is such a construction as presumes the legislature to have intended the least possible innovation on the previously existing body of law.[2] On the other hand, a "liberal" construction may expand the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used.[3] But giving to a statute a "liberal" construction does not mean that the words shall be forced out of their natural meaning, but simply that they shall receive a fair and reasonable interpretation, so as to attain the object for which the statute was designed and the purpose to which it is applied.[4] In other words, the liberal construction of a statute is such as does not presume that the legislature intended the very least possible innovation on previous law, but, looking primarily at the intention of the legislature, endeavors to fulfill it at any cost of innovation; liberal interpretation looks to the intent to determine the amount of innovation.[5]

Where strict construction is called for, the particular

[1] Stanyan v. Town of Peterborough, 69 N. H. 372, 46 Atl. 191; Barber Asphalt Pav. Co. v. Watt, 51 La. Ann. 1345, 26 South. 70; Warner v. Connecticut Mut. Life Ins. Co., 109 U. S. 357, 3 Sup. Ct. 221, 27 L. Ed. 962. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

[2] Shorey v. Wyckoff, 1 Wash. T. 348. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

[3] Lawrence v. McCalmont, 2 How. 449, 11 L. Ed. 326; In re Johnson's Estate, 98 Cal. 531, 33 Pac. 460, 21 L. R. A. 380. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

[4] Crist v. Burlingame, 62 Barb. (N. Y.) 351; Lawrence v. McCalmont, 2 How. 426, 11 L. Ed. 326; In re Johnson's Estate, 98 Cal. 531, 33 Pac. 460, 21 L. R. A. 380; In re Jessup, 81 Cal. 408, 22 Pac. 742, 6 L. R. A. 594; Coggeshall v. City of Des Moines, 138 Iowa, 730, 117 N. W. 309, 128 Am. St. Rep. 221. So, also, in the Roman law. "Benignius leges interpretandæ sunt quo voluntas earum conservetur;" laws are to be more liberally interpreted, in order that their intent may be preserved. Dig. 1, 3, 18. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

[5] Shorey v. Wyckoff, 1 Wash. T. 348. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

case, to come under the statute, must be within both its letter and its spirit and reason. Though the letter of the law may include it, that is not enough unless the spirit and reason of the law also include it; and although the case may be within the spirit and reason of the statute, that is not enough unless it is also within its letter. For a statute of this kind cannot be extended, by intendment or analogy, to cases for which it does not expressly provide. "The letter of remedial statutes may be extended to include cases clearly within the mischief which the statute was intended to remedy, unless such construction does violence to the language used; but a consideration of the old law, the mischief, and the remedy, is not enough to bring cases within the purview of penal statutes. They must be expressly included by the words of the statute. This is all the difference between a liberal and a strict construction of a statute. A case may come within the one unless the language excludes it, while it is excluded by the other unless the language includes it." [6] Moreover, where a strict construction is appropriate, the courts, standing upon the letter of the statute, will accept it as they find it, and will not undertake to amend or reform the language which the legislature has seen fit to employ. They will not put a forced or strained interpretation upon the words of the law in order to avoid penal consequences, but neither will they correct grammatical errors, wrest the words from their usual signification in search of a supposed legislative intent, nor supply apparent omissions or oversights. Thus, in a penal statute, "and" cannot be read as "or," however much the sense may seem to require it; and words apparently omitted by inadvertence or inattention cannot be supplied by intendment.[7]

[6] State v. Powers, 36 Conn. 77. And see Lagier v. Bye, 42 Ind. App. 592, 85 N. E. 36. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

[7] United States v. Ten Cases of Shawls, 2 Paine, 162, Fed. Cas. No. 16,448. In Rice v. United States, 4 C. C. A. 104, 53 Fed. 910, it is said: "Undoubtedly 'and' is not always to be taken conjunctively. It is sometimes read as if it were 'or' and taken disjunctively and distributively, but this is only done where that reading is necessary to give effect to the intention of the legislature, as plainly ex-

But the rule that certain classes of statutes are to be construed strictly and other classes liberally is not a fixed and absolute rule to be resorted to in all cases. It is a rule which is applicable only in cases of substantial doubt. If the meaning and intention of the legislature are plainly expressed, or indubitably discoverable, they must prevail, without any regard to the character of the statute or the view which the interpreter may take of it. In that event there is no room for construction, and this rule, like all others, is simply unnecessary to be considered.[8] The rule does not mean that in one class of cases the court must somewhat abridge the legislative will and in other cases must somewhat expand it. But it means that where the statute is so expressed that the legislative will is not perfectly discoverable, but there arises a reasonable and substantial doubt as to whether or not the act should be applied to the case in question, then, if the statute is penal in its nature (and in some other cases) it will not be so applied, and if it is remedial in its nature (and in some other cases) it will be so applied. And if the words used are capable of being understood in a larger or a narrower sense, in the one case they will be restricted and in the other extended. But the doubt as to the application of the statute must be a substantial one and founded in reason. The courts have no dispensing power, nor should they be unfaithful in their interpretations merely because the particular measure is a

pressed in other parts of the act, or deducible therefrom. In a case of doubtful construction 'and' would probably be used disjunctively to prevent the imposition of pains and penalties, but it would not be so used for the purpose of imposing them; and so, in a doubtful case, it will not be used disjunctively for the purpose of imposing a tax or charge upon the citizen." See, ante, p. 228. *See "Statutes," Dec. Dig. (Key No.) §§ 197, 241; Cent. Dig. §§ 275, 322, 323.*

[8] Nicholson v. Fields, 7 Hurl. & N. 810. The rule requiring the liberal construction of certain classes of statutes does not warrant an extension of them to the suppression of supposed evils or the effectuation of conjectural objects and purposes neither referred to nor indicated in any terms used, nor clearly within the spirit of the statute. Kellar v. James, 63 W. Va. 139, 59 S. E. 939, 14 L. R. A. (N. S.) 1003. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

harsh or severe one. Judges will not be justified, in the case of penal statutes more than in any other case, in imagining ambiguities merely that a lenient construction may be adopted.[9] "The court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument." [10] "We are not to invent doubts or magnify quibbles, but are diligently to seek the legislative intent as expressed in the words of the statute, aided by all other rules of interpretation, and when satisfied beyond all reasonable doubt of what that intent really is, it is our duty to apply and enforce it." [11] As an instance of the application of this principle, we may cite a case in which the statute provided that "if a brother shall marry his brother's wife," the marriage should be dissolved and the parties punished. It was held that marrying the brother's widow was an offense within the statute, since that was the evident meaning of the legislature and since any other construction would have rendered the law nugatory.[12] Again, during the Civil War, Congress passed an

[9] Commonwealth v. Martin, 17 Mass. 359. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[10] Dyke v. Elliott, L. R. 4 P. C. 184. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[11] State v. McCrystol, 43 La. Ann. 907, 9 South. 922. "All statutes, whether remedial or penal, should be construed according to the apparent intention of the legislature, to be gathered from the language used, connected with the subject of legislation, and so that the entire language shall have effect if it can, without defeating the obvious design and purpose of the law. And in doing this, the application of common sense to the language is not to be excluded. This rule is not inconsistent with the principle that penal statutes are to be construed strictly. By this is meant only that they are not to be so extended, by implication, beyond the legitimate import of the words used in them, as to embrace cases or acts not clearly described by such words, and so as to bring them within the prohibition or penalty of such statutes. And there can be no rule which requires courts so to understand a penal law as to involve an absurdity or frustrate the evident design of the law-giver." Rawson v. State, 19 Conn. 292. *See "Statutes," Dec. Dig. (Key No.) §§ 235, 241; Cent. Dig. §§ 316, 322, 323.*

[12] Commonwealth v. Perryman, 2 Leigh (Va.) 717. *See "Statutes,"*

act for the confiscation of property used in aid of the Rebellion, declaring it to be "lawful subject of prize and capture." In strict technical propriety, these words relate only to seizures made at sea. But since it was the plain and obvious purpose of Congress not to restrict the provisions of the act to property taken at sea, but to extend it also to property seized on land, the courts refused to construe the statute as narrowly as the technical signification of the words would seem to require.[13]

Again, the rule of strict and liberal construction combines with others. For instance, it is presumed that the legislature never intends an absurdity; and if this consequence would result from giving to the statute the kind of interpretation contended for (strict or liberal), that consideration may largely influence the construction.[14] Again, effect must be given to all the different parts of the act, and it must be read in the light of other statutes in pari materia.[15] So also, since the endeavor must first be made, in all cases, to discover the real meaning of the legislature, for this end the other rules of construction which we have heretofore studied may be resorted to. Considerations drawn from these other rules may point the court in a certain direction, while considerations drawn from the nature of the statute may incline it in another direction. In such a case, the result would be determined by a compromise or by a preponderance of the arguments.

Moreover, "strict construction is not a precise but a relative expression; it varies in degree of strictness according to the character of the law under construction. The construction will be more or less strict according to the gravity

Dec. Dig. (*Key No.*) § *241; Cent. Dig.* §§ *322, 323; "Marriage," Cent. Dig.* § *28.*

[13] United States v. Athens Armory, 35 Ga. 344, 2 Abb. 129, Fed. Cas. No. 14,473. *See "Statutes," Dec. Dig.* (*Key No.*) § *241; Cent. Dig.* §§ *322, 323; "War," Cent. Dig.* § *194.*

[14] Rawson v. State, 19 Conn. 292. *See "Statutes," Dec. Dig.* (*Key No.*) § *235; Cent. Dig.* § *316.*

[15] The Harriet, 1 Story, 251, Fed. Cas. No. 6,099. *See "Statutes," Dec. Dig.* (*Key No.*) §§ *204–211, 223–225¾; Cent. Dig.* §§ *282–288, 300–306.*

of the consequences flowing from the operation of the statute or its infraction; if penal, the severity of the penalty; if in derogation of common right, or capable of being employed oppressively, the extent and nature of the innovation and the consequences; and in any case, according to the combined effect and the reciprocal influence of all relevant principles of interpretation." [16] Thus, although a retrospective statute may in a given case be valid, it will be subjected to such a construction as will circumscribe its operation within the narrowest possible limits consistent with the manifest intention of the legislature.[17] So of a statute which infringes upon the fundamental principles of government, as where the legislative authority of a city is vested in some other person or body than its common council, the usual repository of that authority.[18] On the other hand, it is said to be the duty of the courts to sustain elections, when free from fraud or improper conduct, where it can be done by a liberal construction of the laws relating thereto, rather than to defeat them by requiring a rigid conformity to technical statutory directions not affecting the substantial rights of the electors.[19] And it has been held that, where the provisions of an act are adopted by a general reference, the act will receive a more liberal construction than if originally passed with reference to the particular subject.[20]

[16] Sutherland, Stat. Constr. § 347. And see Bishop, Writ. Laws, § 199. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

[17] Modern Woodmen of America v. Wieland, 109 Ill. App. 340; Ricup v. Bixter, 2 Dall. 132, 1 L. Ed. 319. *See "Statutes," Dec. Dig. (Key No.) §§ 261–278; Cent. Dig. §§ 342–377.*

[18] People ex rel. Flatbush Gas Co. v. Coler, 190 N. Y. 268, 83 N. E. 18. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 239; Cent. Dig. §§ 318, 320.*

[19] Town of Grove v. Haskell, 24 Okl. 707, 104 Pac. 56. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

[20] Jones v. Dexter, 8 Fla. 276. *See "Statutes," Dec. Dig. (Key No.) § 235; Cent. Dig. § 316.*

PENAL AND CRIMINAL STATUTES

135. Laws creating, defining, or punishing crimes, and those imposing penalties and forfeitures, are to be construed strictly against the state or the party seeking to enforce them, and favorably to the party sought to be charged. They are not to be enlarged by implication, nor extended to persons or cases not plainly within the meaning of the language employed.

136. But the construction of such statutes must not be so strict as to render them ineffective or to defeat the manifest purpose and intention of the legislature.

137. In several states this rule of the common law has been abrogated by general statutes, providing that penal and criminal laws, like all others, must be construed liberally, according to the fair import of their terms, so as to effectuate the purpose of the legislature.

Strict Construction of Penal Statutes

It was an ancient and well-settled rule of the common law, which is still, for the most part, followed and applied, that penal and criminal statutes are to be construed strictly, and not extended or enlarged by implications, intendments, analogies, or equitable considerations.[21] This rule means,

[21] United States v. Morris, 14 Pet. 464, 10 L. Ed. 543; United States v. Sheldon, 2 Wheat. 119, 4 L. Ed. 199; In re McDonough (D. C.) 49 Fed. 360; United States v. Louisville & N. R. Co. (D. C.) 165 Fed. 936; United States v. Twenty Boxes of Corn Whisky, 133 Fed. 910, 67 C. C. A. 214; United States v. Beaty, Hempst. 487, Fed. Cas. No. 14,555; United States v. Wilson, Baldw. 78, Fed. Cas. No. 16,730; United States v. Starr, Hempst. 469, Fed. Cas. No. 16,379; Andrews v. United States, 2 Story, 202, Fed. Cas. No. 381; The Enterprise, 1 Paine, 32, Fed. Cas. No. 4,499; Holmes v. Lambreth, 103 Ala. 460, 50 South. 140; Huffman v. State, 29 Ala. 40; Gunter v. Leckey, 30 Ala. 591; Bettis v. Taylor, 8 Port. (Ala.) 564; Jonesboro, L. C. & E. R. Co. v. Brookfield, 87 Ark. 409, 112 S. W. 977; Rawson v. State, 19 Conn. 292; Myers v. State, 1 Conn. 502; Independent School Dist. No. 5 ex rel. Moore v. Collins, 15 Idaho, 535, 98 Pac. 857, 128 Am. St.

in the first place, that since the power of punishment is vested in the legislative department of government, and not in the judiciary,[22] statutes which create, define, or prescribe the punishment for criminal offenses are to be interpreted according to their strict import, and not so extended by implication or construction as to create crimes or penal-

Rep. 76; Village of Altamont v. Baltimore & O. S. W. R. Co., 184 Ill. 47, 56 N. E. 340; Chicago, R. I. & P. R. Co. v. People, 217 Ill. 164, 75 N. E. 368; Walker v. Dailey, 101 Ill. App. 575; Long v. People, 109 Ill. App. 197; Schulte v. Menke, 111 Ill. App. 212; Board of Com'rs Marion County v. Center Tp., 105 Ind. 422, 2 N. E. 368; Fahnestock v. State, 102 Ind. 156, 1 N. E. 372; Western Union Tel. Co. v. Jones, 116 Ind. 361, 18 N. E. 529; Western Union Tel. Co. v. Axtell, 69 Ind. 199; Vanhook v. State, 5 Blackf. (Ind.) 450; Ferrett v. Atwill, 1 Blatchf. 151, Fed. Cas. No. 4,747; Steel v. State, 26 Ind. 82; Young v. Madison County, 137 Iowa, 515, 115 N. W. 23; Clark v. American Exp. Co., 130 Iowa, 254, 106 N. W. 642; State v. Lovell, 23 Iowa, 304; Commonwealth v. Louisville & N. R. Co., 112 Ky. 783, 66 S. W. 753; Simms v. Bean, 10 La. Ann. 346; Commonwealth v. Macomber, 3 Mass. 254; Commonwealth v. Barlow, 4 Mass. 439; Cleaveland v. Norton, 6 Cush. (Mass.) 380; Hosmer v. Sargent, 8 Allen (Mass.) 97, 85 Am. Dec. 683; Commonwealth v. Worcester & N. R. Co., 124 Mass. 561; Crosby v. Pere Marquette R. Co., 131 Mich. 288, 91 N. W. 124; Van Buren v. Wylie, 56 Mich. 501, 23 N. W. 195; Meister v. People, 31 Mich. 99; Hunt v. Burns, 90 Minn. 172, 95 N. W. 1110; Ferch v. Victoria Elevator Co., 79 Minn. 416, 82 N. W. 678; Stewart v. State (Miss.) 49 South. 615; State ex rel. Wood v. Smith, 114 Mo. 180, 21 S. W. 493; State v. Butler, 178 Mo. 272, 77 S. W. 560; Casey v. St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419; Thiebes-Stierlin Music Co. v. Weiss, 142 Mo. App. 598, 121 S. W. 1099; Howell v. Stewart, 54 Mo. 400; State v. Reid, 125 Mo. 43, 28 S. W. 172; City of St. Louis v. Goebel, 32 Mo. 295; Riddick v. Governor of Territory of Missouri, 1 Mo. 147; State v. Dailey, 76 Neb. 770, 107 N. W. 1094; McCormick Harvesting Mach. Co. v. Mills, 64 Neb. 166, 89 N. W. 621; Ex parte Rickey, 31 Nev. 82, 100 Pac. 134, 135 Am. St. Rep. 651; Lair v. Killmer, 25 N. J. Law, 522; United States v. Santistevan, 1 N. M. 583; People v. Friedman, 132 App. Div. 61, 116 N. Y. Supp. 538; People v. Sturgis, 121 App. Div. 407, 106 N. Y. Supp. 61; Smith v. Boston & A. R. Co., 99 App. Div. 94, 91 N. Y. Supp. 412; Department of Health of City of New York v. Owen, 94 App. Div. 425, 88 N. Y. Supp. 184; Hoboken Beef Co. v. Hand, 104 App. Div. 390, 93 N. Y. Supp. 834; Hall v. State, 20 Ohio,

[22] State v. Woodruff, 68 N. J. Law, 89, 52 Atl. 294. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

ties; or, as expresed by some of the courts, such laws must not be strained by construction to "spell out a new offense," "enlarge the field of crime," or "multiply felonies." [22] Hence a person who is not, beyond reasonable doubt and by the express terms of the statute, within the class of those whose acts are denounced and made punishable there-

7; State ex rel. Gordon v. Oak Harbor Gas Co., 18 Ohio Cir. Ct. R. 751; First Nat. Bank v. National Live Stock Bank, 13 Okl. 719, 76 Pac. 130; Horner v. State, 1 Or. 267; Warner v. Commonwealth, 1 Pa. 154, 44 Am. Dec. 114; Irish v. Elliott, Add. (Pa.) 238; Dawson v. Shaw, 28 Pa. Super. Ct. 563; State v. Solomons, 3 Hill, Law (S. C.) 96; Guild v. Prentis, 83 Vt. 212, 74 Atl. 1115; Samuels v. Commonwealth, 110 Va. 901, 66 S. E. 222; Jennings v. Commonwealth, 109 Va. 821, 63 S. E. 1080, 21 L. R. A. (N. S.) 265, 132 Am. St. Rep. 946; Lescallett v. Commonwealth, 89 Va. 878, 17 S. E. 546; Diddle v. Continental Casualty Co., 65 W. Va. 170, 63 S. E. 962, 22 L. R. A. (N. S.) 779; Raynard v. Chase, 1 Burr. 2; McCaskill v. Union Naval Stores Co., 59 Fla. 571, 52 South. 961; Young v. Moore, 162 Mich. 60, 127 N. W. 29; Cowan v. Western Union Tel. Co. (Mo. App.) 129 S. W. 1066; Brown v. Kildea, 58 Wash. 184, 108 Pac. 452. In the case last cited, the question was upon the construction of a statute requiring the officers of corporations to keep lists of their stockholders, with the number of shares held by each, and to permit any stockholder or creditor of the company to inspect such list and take extracts therefrom. The statute provided that any corporate officer having the custody of such a list, who should refuse or neglect to exhibit it or allow it to be inspected by a party entitled thereto, should be guilty of a misdemeanor, punishable by fine or imprisonment and should also forfeit a fixed penalty. The latter was not in the nature of compensation to the party whose statutory rights were denied, but was a part of the punishment. The court held that this was a penal statute, and subject to the rule of strict construction, since it subjected one person to the payment of money to another without reference to any actual injury, and without requiring the latter to allege or prove any actual injury. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[23] State v. Wallace, 102 Me. 229, 66 Atl. 476; Mayor, etc., of City of Atlanta v. White, 33 Ga. 229; Groff v. State, 171 Ind. 547, 85 N. E. 769; Western Union Tel. Co. v. Axtell, 69 Ind. 199; People v. Weinstock, 193 N. Y. 481, 86 N. E. 547; People v. Hemleb, 127 App. Div. 356, 111 N. Y. Supp. 690; People v. Briggs, 193 N. Y. 457, 86 N. E. 522; William Fox Amusement Co. v. McClellan, 62 Misc. Rep. 100, 114 N. Y. Supp. 594; McCord v. State, 2 Okl. Cr. 214, 101 Pac. 280; State v. Columbian Nat. Life Ins. Co., 141 Wis. 557, 124 N. W. 502. Criminal statutes should never be so construed as to punish those

under, may not be brought within the law by implication or interpretation.[24] And similarly, the operation of a criminal or penal statute cannot be extended by implication so as to embrace cases not included in the express terms of the enactment.[25] Thus a penal statute will not be extended by implication or construction to cases which may be within the mischief which the statute was designed to cure, if they are not at the same time within the terms of the act fairly and reasonably interpreted.[26] An act not expressly prohibited by such a statute cannot be reached by it merely because it resembles the offenses provided against, or may be equally and in the same way demoralizing or injurious;[27] nor can a law of this kind be extended by interpretation to a class of persons who are not included in its terms, for the reason that their acts may be as mischievous as those of the class whose deeds it denounces.[28]

In the next place, in the construction of statutes of this character, it is not permissible for the courts to supply or

who have honestly conformed to the law as declared by the proper authorities; and when a certain thing has been held by the Supreme Court to be allowable under a statute, refined distinctions should never be made to bring within the statute persons who honestly acted in conformity with the rule declared. Commonwealth v. Standard Oil Co., 129 Ky. 744, 112 S. W. 902. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[24] Erbaugh v. United States, 173 Fed. 433, 97 C. C. A. 663; Martin v. United States, 168 Fed. 198, 93 C. C. A. 484; Ex parte Brown, 21 S. D. 515, 114 N. W. 303; Alexander v. Crosby, 143 Iowa, 50, 119 N. W. 717; Hatton v. State, 92 Miss. 651, 46 South. 708. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[25] State v. Peabody, 103 Me. 327, 69 Atl. 273; Wright v. Commonwealth, 109 Va. 847, 65 S. E. 19; The Ben. R., 134 Fed. 784, 67 C. C. A. 290. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[26] Verona Cent. Cheese Co. v. Murtaugh, 50 N. Y. 314; Lair v. Killmer, 25 N. J. Law, 522; Jenkinson v. Thomas, 4 Durn. & E. 665; Dyke v. Elliott, L. R. 4 P. C. 184; United States v. Huggett (C. C.) 40 Fed. 636. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[27] Shaw v. Clark, 49 Mich. 384, 13 N. W. 786, 43 Am. Rep. 474. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[28] Field v. United States, 137 Fed. 6, 69 C. C. A. 568. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

correct any omissions of the legislature, whether resulting from oversight or inadvertence or any other cause, no matter how plainly the act or person omitted may appear to come within the spirit and purpose of the law. "In construing such laws, we should be careful to distinguish between what may have been desirable in the enactment in order that it should effectually accomplish its purpose, and what has been really prohibited or commanded by it. Before conduct hitherto innocent can be adjudged to have been criminal, the legislature must have defined the crime, and the act in question must clearly appear to be within the prohibitions or requirements of the statute, that being reasonably construed for the purpose of arriving at the legislative intention as it has been declared. It is not enough that the case may be within the apparent reason and policy of the legislation upon the subject, if the legislature has omitted to include it within the terms of its enactments. What the legislature has from inadvertence or otherwise omitted to include within the express provisions of a penal law, reasonably construed, the courts cannot supply." [29]

A further development or application of the rule under consideration is that, even in its bearing upon a case which plainly does come within the terms of the law, a criminal or penal statute must be strictly construed. Where the law may be so construed as to give a penalty, and also, and as well, so as to withhold the penalty, it should be given the latter construction.[30] In other words, if the statute contains such an ambiguity as to leave a reasonable doubt of its meaning, it is the duty of the court not to inflict the penalty.[31] And in case of a substantial doubt as to what the legislature really meant, that construction should be

[29] State v. Finch, 37 Minn. 433, 34 N. W. 905. And see Nance v. Southern Ry., 149 N. C. 366, 63 S. E. 116; Schilling v. State, 116 Ind. 200, 18 N. E. 682. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[30] Renfroe v. Colquitt, 74 Ga. 618. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[31] City of Philadelphia v. Costello, 17 Pa. Super. Ct. 339; Dawson v. Shaw, 28 Pa. Super. Ct. 563. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

adopted which is the least severe,[32] or which best protects the rights of the person accused or sought to be charged.[33] Here we may call the attention of the reader to a striking instance mentioned by the older writers. "If the law," says Dwarris, "be that for a certain offense a man shall lose his right hand, and the offender hath before had his right hand cut off in the wars, he shall not lose his left hand, but the crime shall rather pass without the punishment which the law assigned than the letter of the law shall be extended." [34]

Finally, the rule of strict construction of these statutes means that, as between the state, prosecuting or seeking to enforce a penalty or forfeiture, and the party sought to be charged, the construction must be strict against the state and favorable to the innocence, liberty, or rights of the defendant.[35] Similarly, a private party suing for a penalty or forfeiture must bring himself clearly within the meaning of the law and show that he has complied strictly with the terms of the enactment, and he cannot be helped by intendment or presumption.[36]

Construction Not to Defeat Legislative Intent

Although, as above stated, penal statutes are to be construed strictly, yet they are not to be construed so strictly

[32] Weirich v. State, 140 Wis. 98, 121 N. W. 652, 22 L. R. A. (N. S.) 1221. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[33] People ex rel. Cosgriff v. Craig, 195 N. Y. 190, 88 N. E. 38; United States v. Evans, 30 App. D. C. 58. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[34] Potter's Dwarris on Stat. 247.

[35] Bolles v. Outing Co., 175 U. S. 262, 20 Sup. Ct. 94, 44 L. Ed. 156; State v. Balch, 178 Mo. 392, 77 S. W. 547; State v. Gritzner, 134 Mo. 512, 36 S. W. 39; State v. McCance, 110 Mo. 398, 19 S. W. 648; United States v. Doo-Noch-Keen, 2 Alaska, 624; Sutherland v. Commonwealth, 109 Va. 834, 65 S. E. 15, 23 L. R. A. (N. S.) 172, 132 Am. St. Rep. 949; Rohlf v. Kasemeier, 140 Iowa, 182, 118 N. W. 276, 23 L. R. A. (N. S.) 1284, 132 Am. St. Rep. 261. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[36] St. Louis, I. M. & S. Ry. Co. v. McClerkin, 88 Ark. 277, 114 S. W. 240; Cox v. Atlantic Coast Line R. Co., 148 N. C. 459, 62 S. E. 556. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

as to defeat the obvious intention of the legislature, nor is the rule to be so applied as to exclude from the operation of the statute cases which the words in their ordinary acceptation, or in the sense in which the legislature manifestly used them, would comprehend.[37] "It is true," says the Supreme Court of Pennsylvania, "that a penal law must be construed strictly and according to its letter. But this strictness, which has run into an aphorism, means no more than that it is to be interpreted according to its language. Literal interpretation is but a figurative expression, meaning, perhaps, that we are to adhere so closely to the language that we are not to change the signification by dropping even a letter. The purpose of the rule is to prevent acts from being brought within the scope of punishment because courts may suppose they fall within the spirit of the law, though not within its terms. To create offenses by mere construction is not only to entrap the unwary, but to en-

[37] Johnson v. Southern Pac. Co., 196 U. S. 1, 25 Sup. Ct. 158, 49 L. Ed. 363; United States v. Corbett, 215 U. S. 233, 30 Sup. Ct. 81, 54 L. Ed. 173; United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37; United States v. Hartwell, 6 Wall. 385, 18 L. Ed. 830; In re Coy (C. C.) 31 Fed. 794; United States v. Williams (D. C.) 159 Fed. 310; United States v. Lonabaugh (D. C.) 158 Fed. 314; United States v. Illinois Cent. R. Co., 177 Fed. 801, 101 C. C. A. 15; Walton v. State, 62 Ala. 197; Crosby v. Hawthorn, 25 Ala. 221; District of Columbia v. Dewalt, 31 App. D. C. 326; United States v. Baltimore & O. R. Co., 26 App. D. C. 581; Zellers v. White, 208 Ill. 518, 70 N. E. 669, 100 Am. St. Rep. 243; Boyer v. State, 169 Ind. 691, 83 N. E. 350; State v. Kiley, 36 Ind. App. 513, 76 N. E. 184; Doe ex dem. Lafontaine v. Avaline, 8 Ind. 6; State v. J. P. Bass Pub. Co., 104 Me. 288, 71 Atl. 894, 20 L. R. A. (N. S.) 495; Butler v. Ricker, 6 Me. 268; Parkinson v. State, 14 Md. 184, 74 Am. Dec. 522; Commonwealth v. Loring, 8 Pick. (Mass.) 370; Melody v. Reab, 4 Mass. 471; Bobo v. Board of Levee Com'rs of Yazoo-Mississippi Delta, 92 Miss. 792, 46 South. 819; State v. Hand, 71 N. J. Law, 137, 58 Atl. 641; Stricker v. Pennsylvania R. Co., 60 N. J. Law, 230, 37 Atl. 776; Pike v. Jenkins, 12 N. H. 255; Wilson v. Wentworth, 25 N. H. 245; People v. Bartow, 6 Cow. (N. Y.) 290; State ex rel. West v. State Capital Co., 24 Okl. 252, 103 Pac. 1021; State v. Fisher, 53 Or. 38, 98 Pac. 713; Mayor, etc., of City of Philadelphia v. Davis, 6 Watts & S. (Pa.) 269; Bartolett v. Achey, 38 Pa. 273; Huguelet v. Warfield, 84 S. C. 87, 65 S. E. 985; Mills v. Southern Ry., 82 S. C. 242, 64 S. E. 238; Randolph v. State, 9 Tex. 521; Texas & P. Ry. Co. v.

danger the rights of the citizen." [38] This subject received the careful consideration of Chief Justice Marshall in a leading case before the Supreme Court of the United States, and was explained and commented on by him as follows: "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative, not in the judicial, department. It is the legislature, not the court, which is to define a crime and ordain its punishment. It is said that notwithstanding this rule the intention of the lawmaker must govern in the construction of penal as well as other statutes. This is true. But this is not a new, independent rule which subverts the old. It is a modification of the ancient maxim, and amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. This maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in the sense in which the legislature has obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed which would justify the court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous indeed to carry the principle, that a case which is within the reason or mischief of a stat-

Taylor (Tex. Civ. App.) 118 S. W. 1097; International & G. N. R. Co. v. Voss, 49 Tex. Civ. App. 566, 109 S. W. 984; Village of Hardwick v. Vermont Telephone & Telegraph Co., 70 Vt. 180, 40 Atl. 169; Dyke v. Elliott, L. R. 4 P. C. 184; King v. Inhabitants of Hodnett, 1 Durn. & E. 96. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[38] Commonwealth v. Cooke, 50 Pa. 201. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

ute is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases." [39] The true doctrine, thus set forth, is carried somewhat further by Story, J., in the following expressions: "Penal statutes are not to be enlarged by implication, or extended to cases not obviously within their words and purport. But where the words are general and include various classes of persons, I know of no authority which would justify the court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them. And where a word is used in a statute which has various known significations, I know of no rule that requires the court to adopt one in preference to another, simply because it is more restrained, if the objects of the statute equally apply to the largest and broadest sense of the word. In short, it appears to me that the proper course in all these cases is to search out and follow the true intent of the legislature, and to adopt that sense of the words which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature." [40] To much the same effect are the following instructive remarks by a learned judge in North Carolina: "It is an old but not very precisely defined rule of law that penal statutes must be construed strictly. By this is meant no more than that the court, in ascertaining the meaning of such a statute, cannot go beyond the plain meaning of the words and phraseology employed in search of an intention not certainly implied by them. If there is no ambiguity in the words or phraseology, nothing is left to construction—their plain meaning must not be ex-

[39] United States v. Wiltberger, 5 Wheat. 76, 95, 5 L. Ed. 37. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[40] United States v. Winn, 3 Sumn. 209, Fed. Cas. No. 16,740. See, also, The Enterprise, 1 Paine, 32, Fed. Cas. No. 4,499. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

tended by inferences; and when there is reasonable doubt as to their true meaning, the court will not give them such interpretation as to impose a penalty. Nor will the purpose of the statute be extended by implication so as to embrace cases not clearly within its meaning. If there be reasonable doubt arising as to whether the acts charged to have been done are within its meaning, the party of whom the penalty is demanded is entitled to the benefit of that doubt. The spirit of the rule is that of tenderness and care for the rights of individuals, and it must always be taken that penalties are imposed by the legislative authority only by clear and explicit enactments; that is, the purpose to impose the penalty must clearly appear. Such enactments, as to their words, clauses, several parts, and the whole, must be construed strictly together, but as well, and as certainly in all respects, in the light of reason. This rule, however, is never to be applied so strictly and unreasonably as to defeat the clear intention of the legislature. On the contrary, that intention must govern in construing penal as well as other statutes. This is a primary rule of construction, applicable in the interpretation of all statutes. The meaning of words or sentences should not be narrowed or strained so as to exclude the meaning intended; and while the purpose of the statute should not be extended by implication, it should not, on the other hand, be narrowed so as to abridge the intention that reasonably appears from its words, phraseology, and constituent parts. If words and sentences, and parts of sentences, having no very definite signification in their ordinary use, are employed and clearly intended to have a particular and definite meaning and application, and this appears from their particular use, connection, and application in the statute, that meaning and application must be accepted as proper and controlling. If the intention to impose the penalty certainly appears, that is sufficient and it must prevail. Otherwise the legislative intent would or might be defeated by mere interpretation, which can never be allowed." [41]

[41] Hines v. Wilmington & W. R. Co., 95 N. C. 434, 59 Am. Rep. 250. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323*

One or two illustrations will suffice to make plain the manner of the application of these principles. In Connecticut, a statute enacted penalties against any person who should keep "houses of bawdry." It was held to be applicable to a person who kept but one such house. It was urged that the act, being penal, should be taken according to its strict letter, and therefore would not apply to a case not explicitly provided for, viz., where one house only was so kept. But the court rejected this view, saying that while the statute was undoubtedly penal, the construction contended for would defeat its manifest purpose and object and frustrate the obvious intention of the legislature.[42] So again, a statute which contained simply mandatory provisions imposed a penalty for a failure to comply with the "conditions" of the section. It was held that the intent was plain to cast upon the delinquent the prescribed penalty for a failure to comply with the mandatory provisions. "It is insisted," said the court, "that the statute imposes the penalty for a failure to comply with the conditions of the section; that in fact there are no conditions, but simply mandatory provisions; that this, being a penal statute, is to be construed strictly; and hence, there being no conditions, no penalty is recoverable. Whatever criticism may be placed upon the use of the word 'conditions,' the intent of the legislature is plain, and although this be a penal statute, it is not to be so construed as to defeat the manifest intent of the law-making power." [43]

Construction Not to Render Statute Ineffective

The rule that it must never be presumed that the legislature intended a vain thing, but the construction must always be such as to render their enactments effective,[44] applies as well to the interpretation of criminal and penal laws as to any other. Hence the construction of a statute of this

[42] State v. Main, 31 Conn. 572. *See "Statutes," Dec. Dig. (Key No.) § 241; "Disorderly House," Cent. Dig. § 3.*

[43] State of Missouri v. Kansas City, Ft. S. & G. R. Co. (C. C.) 32 Fed. 722. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[44] Supra, p. 132.

character must never be so strict (if another and reasonable construction can be found) as to deprive it of force and vitality. It must not be so rigidly interpreted as to remove from its scope all the persons or acts intended to be covered by it, leaving it nugatory.[45]

Aids to Construction

It is not to be supposed that a penal or criminal statute is an isolated case, subject to no other rule of construction than that of strict interpretation. On the contrary, it is only in cases of doubt or ambiguity that it is open to construction at all, and then the primary endeavor must be to ascertain the real meaning and intent of the legislature; and in this search, the court may and should apply the various subsidiary rules of interpretation as it would in the case of any other statute. Thus, a law of this kind should not be so narrowed as to exclude cases which the words of the statute, in their ordinary acceptation, would comprehend.[46] On the other hand, it cannot be presumed, as against the defendant in a criminal case, that the legislature, in the absence of a formal expression of such a purpose, intended to enlarge or extend the previously well-defined legal meaning of the terms which it employs in a new act, so as to make a new classification or make the descriptive words include an additional class of objects to that formerly understood by such terms.[47] The rule of consulting statutes in pari materia is also applicable; and where the meaning of a penal statute is obscure, resort may be had to previous legislation on the same subject.[48] Again, there is a presumption

[45] United States v. Dillin, 168 Fed. 813, 94 C. C. A. 337; Garrison v. Southern Ry. Co., 150 N. C. 575, 64 S. E. 578; Conrad v. State, 75 Ohio St. 52, 78 N. E. 957, 6 L. R. A. (N. S.) 1154. *See "Statutes," Dec. Dig. (Key No.) §§ 235, 241; Cent. Dig. §§ 316, 322, 323.*

[46] St. Louis, I. M. & S. Ry. Co. v. Waldrop (Ark.) 123 S. W. 778. *See "Statutes," Dec. Dig. (Key No.) §§ 235, 241; Cent. Dig. §§ 316, 322, 323.*

[47] Johnson v. State, 1 Ga. App. 195, 58 S. E. 265. *See "Statutes," Dec. Dig. (Key No.) §§ 235, 241; Cent. Dig. §§ 316, 322, 323.*

[48] Hadley v. Western Union Tel. Co., 115 Ind. 191, 15 N. E. 845. *See "Statutes," Dec. Dig. (Key No.) §§ 225, 241; Cent. Dig. §§ 302, 308, 322, 323.*

that the law-making body does not attempt to give exterritorial effect to its enactments; and it is the natural interpretation of statutes creating offenses and defining conduct which is made indictable or subject to penalties to refer them solely to the commission of acts within the state.[49]

What are Penal Statutes

The words "penal" and "penalty," in their strict and primary signification, denote a punishment, whether corporal or pecuniary, imposed and enforced by the state for a crime or offense against its laws; and "penal laws," strictly and primarily, are those imposing a punishment for an offense against the state, which the executive of the state has the power to pardon, and the expression does not include statutes which give a private action against the wrongdoer or provide for the numerous forfeitures or penalties growing out of breaches of duty that partake of the nature of a civil grievance or a merely local wrong, and which do not come within the category of criminal conduct.[50] This is the meaning to be attached to the term in applying the rule of international law that the courts of one state or country will not enforce the penal laws of another. But it is evident that, for the purposes of statutory construction, and with reference to the rule now under consideration, the term must be taken in a very much wider sense than this. "Among penal laws which must be strictly construed, those most obviously included are all such acts as in terms impose a fine or corporal punishment under sentence in state prosecutions, or forfeitures to the state as a punitory consequence of violating laws made for the preservation of the peace and good order of society. But these are not the only penal laws which have to be so construed. There are to be

[49] In re Ebbs, 150 N. C. 44, 63 S. E. 190, 19 L. R. A. (N. S.) 892. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[50] Huntington v. Attrill, 146 U. S. 657, 13 Sup. Ct. 224, 36 L. Ed. 1123; Rumball v. Schmidt, L. R. 8 Q. B. Div. 603; People ex rel. Fennell v. Common Council of Bay City, 36 Mich. 186; Wayne County v. City of Detroit, 17 Mich. 390; State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 South. 969. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

included under that denomination also all acts which impose by way of punishment any pecuniary mulct or damages beyond compensation for the benefit of the injured party, or recoverable by an informer, or which, for like purposes, impose any special burden or take away or impair any privilege or right." [51] And to determine whether a liability to which a person is subjected is by way of penalty, it is not necessary that the statute, in the language imposing it, should so denominate it. When, for instance, the statute subjects an officer of a corporation, as such officer, to a liability to pay money, either for omitting to perform a duty enjoined or for doing an act prohibited, and does this in a case where, but for such omission of duty or wrongful act, he would be under no liability, he is thereby subjected to a forfeiture of the sum which he is made liable to pay, and so far as he is concerned, the imposition of liability is by way of punishment.[52] But if a statute in the nature of a police regulation gives a remedy for private injuries resulting from the violation thereof, and also imposes fines and penalties at the suit of the public for such violation, the former will not be regarded in the nature of a penalty, unless so declared.[53]

Examples of Penal Statutes and Their Construction

Any statute which may involve, as a consequence of its violation, the depriving a citizen of his life or his liberty, is to be construed with strictness.[54] So, also, if there is any doubt in the case, penal statutes are not to be so con-

[51] Sutherland, Stat. Constr. § 358. And see Lagler v. Bye, 42 Ind. App. 592, 85 N. E. 36; People v. Dada, 141 Ill. App. 557; Hall v. Norfolk & W. R. Co., 44 W. Va. 36, 28 S. E. 754, 41 L. R. A. 669, 67 Am. St. Rep. 757. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[52] Merchants' Bank of New Haven v. Bliss, 13 Abb. Prac. (N. Y.) 225; Brown v. Kildea, 58 Wash. 184, 108 Pac. 452. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[53] Pittsburgh, Ft. W. & C. R. Co. v. Methven, 21 Ohio St. 586. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[54] Pierce's Case, 16 Me. 255; Ramsey v. Foy, 10 Ind. 493. *See "Statutes," Dec. Dig. (Key No.) §§ 235, 241; Cent. Dig. §§ 316, 322, 323.*

strued as to multiply felonies.[55] A statute declaring that "any person convicted of the offense of insurrection or an attempt at insurrection shall be punished with death," will not include the case of an attempt to incite insurrection.[56] A statute which prohibits, under penalties, the laying of a bet or wager on the result of "any election within this commonwealth," is penal and must be strictly construed, and therefore it does not apply to a primary election for the choice of party candidates.[57] Again, an act providing for testing the accuracy of the weights and measures used in selling commodities, and affixing a penalty for "selling" by unmarked weights and measures, cannot be extended beyond its terms, although there may appear no other good reason for not applying it to buyers' weights and measures also.[58] An act which imposes a penalty on any telegraph company which shall fail to "transmit over its wires" a message delivered to it for transmission, will be strictly construed; and hence such a company will not be liable to a penalty for refusal to deliver a message after it has been transmitted.[59] The same is true of a statute which prohibits attorneys at law from buying "any bond, bill, promissory note, bill of exchange, book debt, or other thing in action, with the intent and for the purpose of bringing any suit thereon." Such an act will not apply to a purchase of corporate stock by an attorney, though it be for the purpose of enabling him to sue, as such stock does not come

[55] Commonwealth v. Macomber, 3 Mass. 254; Commonwealth v. Barlow, 4 Mass. 439. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[56] Gibson v. State, 38 Ga. 571. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Insurrection," Cent. Dig. § 2.*

[57] Commonwealth v. Wells, 110 Pa. 463, 1 Atl. 310. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Elections," Cent. Dig. § 342.*

[58] Southwestern R. Co. v. Cohen, 49 Ga. 627. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Weights and Measures," Cent. Dig. § 11.*

[59] Brooks v. Western Union Tel. Co., 56 Ark. 224, 19 S. W. 572; Western Union Tel. Co. v. Coyle, 24 Okl. 740, 104 Pac. 367. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Telegraphs and Telephones," Cent. Dig. § 79.*

within the letter of the statute.[60] In Wisconsin, a law prohibited the county treasurer and clerk, or any of their deputies, or any other person for them, to purchase, directly or indirectly, property sold for taxes at any tax sale, or to purchase any tax certificate or tax deed held by the county, except for and in behalf of the county. It was held that this act, being subjected to a strict construction, would not prohibit the county treasurer or his deputy from buying a tax certificate from any other party than the county and having a deed issued to him thereon.[61] A penal statute which is local in its character, and refers to persons, places, or things, will be restricted, unless it be otherwise expressed, to such persons, places, or things as existed at the time of its passage, and not extended to those afterwards coming into being or coming under the policy or general purpose of the law. Hence a statute prohibiting the sale of intoxicating liquors within the vicinity of certain manufacturing establishments in three designated counties will be confined to such manufacturing establishments as existed in those counties at the time of its enactment.[62] And where one class of persons is designated as subject to the penalties of the statute, all persons not belonging to such class are to be deemed exonerated.[63] Again, a statute which confiscates the property of an individual will be understood as operating only upon the interest of that individual, and not as defeating the rights of those who held or might claim the property to the prejudice of the individual himself.[64] An act causing a forfeiture of a life-estate does not work a

[60] Ramsey v. Gould, 57 Barb. (N. Y.) 398. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Champerty and Maintenanee," Cent. Dig. § 37.*

[61] Coleman v. Hart, 37 Wis. 180. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Taxation," Cent. Dig. § 1359.*

[62] Hall v. State, 20 Ohio, 7. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[63] State v. Jaeger, 63 Mo. 403, citing Howell v. Stewart, 54 Mo. 400. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[64] Russell v. Transylvania University, 1 Wheat. 432, 4 L. Ed. 129. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

forfeiture of the estate in remainder.[65] A statute authorizing punishment for contempts of court is a penal law, and must be strictly construed in favor of those accused of violating its provisions.[66] The same is true of a statute imposing penalties on railroad companies for making unjust discriminations in the rates charged by them for the transportation of freight.[67] And a law making a mortgagee liable to an action for the recovery of a stated sum if he neglects or refuses to enter satisfaction of the mortgage or cancel the same of record, when it has been paid, is penal in its character, and will not be extended by construction to persons or cases not plainly within its terms.[68] So, also, it is with a statute which requires the payment of one per cent. a month on all taxes remaining unpaid and delinquent.[69] And the penalty prescribed for the violation of a statute cannot be applied for the violation of a later statute repealing the former one, if there is no express or implied legislative declaration to that effect.[70] The same rule is applied to a statute authorizing the recovery of a penalty against a public officer charging higher fees for his services than the law allows;[71] to one imposing a forfeiture of franchises for failure to perform certain conditions;[72] to one

[65] Archer v. Jones, 26 Miss. 583. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Remainders," Cent. Dig. § 7.*

[66] Maxwell v. Rives, 11 Nev. 213. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Contempt," Cent. Dig. § 92.*

[67] Hines v. Wilmington & W. R. Co., 95 N. C. 434, 59 Am. Rep. 250. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Carriers," Cent. Dig. § 33.*

[68] Grooms v. Hannon, 59 Ala. 510; Marston v. Tryon, 108 Pa. 270 *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Mortgages," Cent. Dig. § 932.*

[69] People ex rel. Johnson v. Peacock, 98 Ill. 172; Commonwealth v. Standard Oil Co., 101 Pa. 119. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Taxation," Cent. Dig. § 1656.*

[70] State v. Gaunt, 13 Or. 115, 9 Pac. 55. *See "Statutes," Dec. Dig. (Key No.) § 275; Cent. Dig. § 369.*

[71] Schultzman v. McCarthy, 16 Pa. Co. Ct. R. 600. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Extortion," Cent. Dig. §§ 2, 11.*

[72] Toledo & A. A. R. Co. v. Johnson, 49 Mich. 148, 13 N. W. 492. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

prohibiting, under heavy penalties the sale or removal of property subject to a chattel mortgage within five days after the giving of the mortgage;[73] to one requiring colliery corporations to keep always on hand near the mine medical and surgical supplies for aiding injured workmen;[74] to one imposing damages for the failure of a tax collector to pay over taxes collected;[75] to one imposing a penalty on foreign corporations for doing business within the state without filing their articles of incorporation;[76] and to one imposing a penalty on railroad companies for failure to furnish cars on application.[77]

Statutes Giving Costs.

It is generally held that statutes allowing the recovery of costs are to be construed with reasonable strictness, as being in the nature of penal statutes.[78] But a law which provides that a plaintiff who becomes nonsuit shall pay the costs of the first action before he shall be allowed to proceed in a subsequent action "should be interpreted liberally in behalf of defendants. It imposes no unreasonable burden on a plaintiff to require him to pay costs, which he has put upon a defendant without cause, before he can proceed again."[79]

[73] Minneapolis Threshing Mach. Co. v. Haug, 136 Wis. 350, 117 N. W. 811. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[74] Sourwine v. McRoy Clay Works, 42 Ind. App. 358, 85 N. E. 782. *See "Statutes," Dec. Dig. (Key No.) §§ 239, 241; Cent. Dig. §§ 320, 322, 323.*

[75] Adams v. Saunders, 93 Miss. 520, 46 South. 960. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[76] People v. Crucible Steel Co. of America, 151 Mich. 618, 115 N. W. 705. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[77] Texas & P. Ry. Co. v. Blocker, 48 Tex. Civ. App. 100, 106 S. W. 718. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[78] Cone v. Bowles, 1 Salk. 205; Aechternacht v. Watmough, 8 Watts & S. (Pa.) 162; Dent v. State, 42 Ala. 514; Morrow v. Rosenstihl, 106 Ala. 198, 17 South. 608; Compare King v. Justices of York, 1 Ad. & El. 828. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Costs," Cent. Dig. § 3.*

[79] Smith v. Allen, 79 Me. 536, 12 Atl. 542. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

Usury Laws

It has been held that usury laws, when they prescribe the forfeiture of all interest upon contracts affected by unlawful charges of interest, are penal laws and to be strictly construed.[80] But on the other hand, it is said that a statutory provision that when a bank shall demand or receive more than the legal rate of interest, there shall be a forfeiture of the entire interest which the note or bill carries with it, or which has been agreed upon, is remedial as well as penal, and is to be liberally construed to effect the object which the legislature had in view in enacting it.[81]

Civil Damage Laws

Civil damage laws are statutes which give a right of action against liquor dealers in favor of innocent parties who sustain injury by the intoxication of persons supplied with liquor by the defendants, or by the consequences of such intoxication, or by the acts of intoxicated persons, or by the furnishing of liquor to minors or habitual drunkards after warning given not to do so. These laws, being highly penal in their character, and introducing remedies unknown to the common law, and, as the statutes are framed in some jurisdictions, giving to the party prosecuting a decided advantage over the party defending, should receive a strict construction.[82] Hence, for example, no person can maintain an action under their provisions to whom a right of action is not given by their terms.[83] But on the other hand,

[80] Coble v. Shoffner, 75 N. C. 42. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Usury," Cent. Dig. § 437.*

[81] Farmers' & M. Nat. Bank v. Dearing, 91 U. S. 29, 23 L. Ed. 196; Ordway v. Central Nat. Bank of Baltimore, 47 Md. 217, 28 Am. Rep. 455. *See "Statutes," Dec. Dig. (Key No.) §§ 236, 241; Cent. Dig. §§ 317, 322–325.*

[82] Meidel v. Anthis, 71 Ill. 241; Freese v. Tripp, 70 Ill. 496; Fentz v. Meadows, 72 Ill. 540; Kennedy v. Garrigan, 23 S. D. 265, 121 N. W. 783. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Intoxicating Liquors," Dec. Dig. (Key No.) § 283; Cent. Dig. § 418.*

[83] Schneider v. Hosier, 21 Ohio St. 98. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Intoxicating Liquors," Dec. Dig. (Key No.) § 283; Cent. Dig. § 418.*

while a statute of this character should not be enlarged, it should be interpreted, where the language is clear and explicit, according to its true intent and meaning, having in view the evil to be remedied and the object to be attained. It would be a gross failure of justice to put so narrow a construction upon these acts as to impair the effects which they were intended to produce. Their beneficent purpose is not to be defeated by technical or verbal niceties.[84]

Statutes Giving Double and Treble Damages

The rule that penal statutes are to be construed strictly does not apply to a case where the party has a remedy at common law and the statute merely gives an increase of damages.[85] But where the law, by way of punishing given acts or omissions, authorizes a judgment to be entered for double or treble the amount of damages found by the jury, it is in the nature of a penal statute and is to be construed accordingly.[86] Thus, a statute providing for the recovery of treble damages for the cutting of timber on the lands of another, in certain cases, is penal in its character, and must be held to apply, not to every case of a technical trespass or conversion, but only to cases in which some element of willfulness, wantonness, or evil design enters into the acts complained of.[87] So, where a statute provided that any person who had lost money at gambling might recover the same in an action to be brought within three months, but that if he neglected to sue, any third person who might thereafter choose to sue should be entitled to recover three

[84] Mead v. Stratton, 87 N. Y. 493, 41 Am. Rep. 386. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Intoxicating Liquors," Dec. Dig. (Key No.) § 283; Cent. Dig. § 418.*

[85] Ellis v. Whitlock, 10 Mo. 781; Phillips v. Smith, 1 Strange, 137; Lagler v. Bye, 42 Ind. App. 592, 85 N. E. 36. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Damages," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 574, 575.*

[86] Bay City & E. S. R. Co. v. Austin, 21 Mich. 390. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Damages," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 574, 575.*

[87] Cohn v. Neeves, 40 Wis. 393. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Damages," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 574, 575.*

times the amount lost, it was held that the statute was penal and should be construed with strictness.[88]

Laws Imposing Liability on Stockholders

Although there is considerable diversity of opinion as to the proper construction of statutes imposing on stockholders in private corporations an individual liability for the debts of the corporation, into the details of which we cannot now enter, the better opinion appears to be that if such liability is to be regarded as at all in the nature of a penalty, such laws should receive a strict construction.[89] But in a case in New York, it is said: "A personal liability of stockholders for the debts of a corporation, in virtue of the charter, is not in the nature of a penalty or forfeiture, and does not exist solely as a liability imposed by statute. It is not enforced simply as a statutory obligation, but is regarded as voluntarily assumed, by the act of becoming a stockholder." But, at the same time, "the operation and effect of the statute, or the liability of the stockholder, which is measured by it, cannot be extended by implication. There is no implied undertaking of the defendant as a stockholder of the bank, and there is no obligation resulting from that relation other than such as is expressed, in terms or by necessary implication, in the act of incorporation." [90]

Statutes Both Remedial and Penal

While penal statutes are to be construed strictly, and remedial statutes liberally, it does not follow that any given statute must belong irrevocably to one or the other of these two classes. The two terms are not in exact antithesis. Moreover, an act of the legislature may be penal

[88] Cole v. Groves, 134 Mass. 471. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323; "Damages," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 574, 575.*

[89] O'Reilly v. Bard, 105 Pa. 569. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[90] Lowry v. Inman, 46 N. Y. 119. And see Gray v. Coffin, 9 Cush. (Mass.) 192. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

in part and remedial in part, with a corresponding difference in the construction. That penal provisions are found in it does not necessarily make it penal in its whole extent or for all purposes.[91] A statute may well be penal in some of its parts, provisions, aspects, applications, or consequences, and remedial in others; or it may be penal as to some of the persons to be affected by it, and remedial as to others. For instance, a law making void assignments for the benefit of creditors, when made with the view of giving preferences, might contain penal provisions to be applied to the insolvent debtor, and yet be remedial in its relation to the creditors whom it enabled to share in the distribution of the estate. In general it is said that when a prohibitory act gives the right to enforce the penalty for its violation to the party aggrieved, it will be construed as remedial in its nature; but it is a penal act when such right is given to the public or the government.[92] In the interpretation of a statute of this character, a greater or less latitude of construction should be indulged according to whether the question is as to the party's being able to take advantage of the beneficial and remedial features of the act, or as to the applicability of the penalty to the particular case before the court.[93] But as a general rule (and especially where these two questions cannot be separated) the courts are disposed to lay the greater stress upon the penal

[91] Hyde v. Cogan, 2 Dougl. 699; Short v. Hubbard, 2 Bing. 349. For instance, that part of a statute relating to juvenile offenders which provides for preferring charges against delinquent children and bringing them before the court is remedial in its nature, its purpose being to place the state in the position of guardian to such children, and therefore it should be liberally construed. State v. Dunn, 53 Or. 304, 99 Pac. 278. *See "Statutes," Dec. Dig. (Key No.) §§ 236, 241; Cent. Dig. §§ 317, 322–325.*

[92] Ordway v. Central Nat. Bank of Baltimore, 47 Md. 217, 28 Am. Rep. 455. *See "Statutes," Dec. Dig. (Key No.) §§ 236, 241; Cent. Dig. §§ 317, 322–325.*

[93] Commouwealth v. Shaleen, 215 Pa. 595, 64 Atl. 797; Lagler v. Bye, 42 Ind. App. 592, 85 N. E. 36; Robinson v. Harmon, 157 Mich. 276, 122 N. W. 106. *See "Statutes," Dec. Dig. (Key No.) §§ 236, 241; Cent. Dig. §§ 317, 322–325.*

features of the act and to construe it accordingly.[94] Thus, it is said that, so far as statutes for the regulation of trade impose fines or create forfeitures, they are to be construed strictly as penal laws, and not liberally as remedial laws.[95] So also, statutes authorizing arrest and imprisonment for debt, although remedial to the extent that they are designed to coerce payment, are also regarded as penal, and they are not to be extended by construction so as to embrace cases not clearly within them. Thus, when the statute authorizes an arrest "when the defendant has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought," it applies only to cases of actual personal fraud on the part of the defendant, and does not include merely legal or constructive fraud.[96] Again, an act conferring on creditors of an attachment defendant the right to intervene and defend in case of his failure to do so, and providing that if judgment be in favor of the intervener, it shall be for any damage found by the jury, whether actual or exemplary, and shall abate the suit and writ, while remedial as to the intervener, is penal as to the plaintiff, and is therefore not applicable to suits pending at the time of its passage, unless expressly made so.[97] A proviso or exception in a penal statute which is favorable to the defendant is to be construed liberally in his behalf.[98]

[94] Abbott v. Wood, 22 Me. 541. But on the other hand, in Sickles v. Sharp, 13 Johns. (N. Y.) 497, it is said that a statute, penal as to some persons, if it is generally beneficial, may be equitably construed. *See "Statutes," Dec. Dig. (Key No.) §§ 236, 241; Cent. Dig. §§ 317, 322–325.*

[95] Mayor, etc., of City of Philadelphia v. Davis, 6 Watts & S. (Pa.) 269. *See "Statutes," Dec. Dig. (Key No.) §§ 236, 241; Cent. Dig. §§ 317, 322–325.*

[96] Hathaway v. Johnson, 55 N. Y. 93, 14 Am. Rep. 186. *See "Statutes," Dec. Dig. (Key No.) §§ 236, 241; Cent. Dig. 317, 322–325.*

[97] Powers v. Wright, 62 Miss. 35. *See "Statutes," Dec. Dig. (Key No.) §§ 236, 241; Cent. Dig. §§ 317, 322–325.*

[98] Philadelphia v. Costello, 17 Pa. Super. Ct. 339; Dawson v. Shaw, 28 Pa. Super. Ct. 563; State v. Howard, 137 Mo. 289, 38 S. W. 908; State v. Bryant, 90 Mo. 534, 2 S. W. 836. *See "Statutes," Dec. Dig. (Key No.) §§ 228, 236, 241; Cent. Dig. §§ 310, 317, 322–325.*

Modern Modifications of and Exceptions to Rule of Strict Construction

The rule requiring an invariable strict construction to be applied to penal and criminal statutes was always regarded as somewhat arbitrary; and it has been very greatly modified by the modern recognition of the doctrine that the only cardinal rule of statutory construction is to seek out and enforce the intention of the legislature. Moreover, the courts of late have often resolved that there was no reason for applying a strict construction to certain kinds of laws, although they were penal in character. Thus we find it stated that statutes which deprive men of liberty or property and bring them into disgrace may well be interpreted strictly, though at the same time in a reasonable manner and so as to arrive at and carry out the intent of the lawmakers,[99] and that a law, penal in nature, should not be construed as applicable to an act, otherwise innocent and natural and of common occurrence, unless such a legislative intention is clear and unmistakable.[100] But, on the other hand, statutes imposing penalties for the invasion of the rights of the citizen, in order to protect him in his liberty and happiness, are not subjects of disfavor in law, and are not to be construed with the same strictness as those which restrain the exercise of a natural right or forbid the doing of things not intrinsically wrong.[101] Indeed, it has been broadly declared that a statute which is made for the good of the public, although it is penal, ought to receive an equitable construction.[102] Without going to that extent, the courts now generally hold that even a criminal statute should not necessarily be subjected to the narrowest possible interpretation, but the court should adopt that sense of

[99] Schilling v. State, 116 Ind. 200, 18 N. E. 682. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[100] East v. Brooklyn Heights R. Co., 195 N. Y. 409, 88 N. E. 751, 23 L. R. A. (N. S.) 513; In re T. H. Bunch Co. (D. C.) 180 Fed. 519. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[101] Peonage Cases (D. C.) 123 Fed. 671. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[102] Tyner v. United States, 23 App. D. C. 324. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

the words which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.[103] The courts will not indulge in undue refinements, nor will they imagine ambiguities merely in order that a lenient construction may be adopted,[104] nor strain the language or place upon it an unreasonable and incongruous interpretation, so as to discharge persons fairly within its scope.[105] It is said that they should carefully consider and guard against so construing a law that a proper rule of evidence would be perverted into a means of escape from punishment by an offender.[106] And while it is true that, if a penal statute contains a patent ambiguity, nothing should be regarded as included that is not within its letter as well as its spirit, yet, if the meaning of such a statute is simply obscure, the only permissible guide to its interpretation is the intention which the legislature had in enacting it, which must be determined from the statute as a whole and the language of the context.[107]

Statutes Abolishing the Rule

In several of the states, the common-law rule requiring the strict construction of penal statutes has been displaced

[103] McInerney v. United States, 143 Fed. 729, 74 C. C. A. 655; Deloria v. Atkins, 158 Mich. 232, 122 N. W. 559; People v. Ahearn, 196 N. Y. 221, 89 N. E. 930, 26 L. R. A. (N. S.) 1153; United States v. Illinois Cent. R. Co., 177 Fed. 801, 101 C. C. A. 15; Wade v. United States, 33 App. D. C. 29, 20 L. R. A. (N. S.) 347; People, for Use of State Board of Health, v. Koehler, 146 Ill. App. 541; Ex parte Prosole (Nev.) 108 Pac. 630; People v. Abramson, 137 App. Div. 549, 122 N. Y. Supp. 115; State v. Shuford, 152 N. C. 809, 67 S. E. 923. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[104] Commonwealth v. Martin, 17 Mass. 359; Commonwealth v. Keniston, 5 Pick. (Mass.) 420. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[105] State v. Goodwin, 169 Ind. 265, 82 N. E. 459. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[106] Atchison v. State, 3 Okl. Cr. 295, 105 Pac. 387. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[107] State v. Fargo Bottling Works Co. (N. D.) 124 N. W. 387, 26 L. R. A. (N. S.) 872. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

or abrogated by legislative authority. Thus, in California, the Penal Code provides that "the rule of the common law, that penal statutes are to be construed strictly, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice." [108] So, also, in Kentucky, the common-law rule has been abrogated by statute, and penal laws, like all others, are to be construed with a view to carry out the intention of the legislature.[109] And statutes of substantially similar import and effect have been enacted in several of the other states.[110]

STATUTES AGAINST COMMON RIGHT

138. Statutes which are in derogation of common right are to be construed strictly.

It is a well-settled rule that statutes which are in derogation of common right, and which confer special privileges, or impose special burdens or restrictions, upon individuals or upon one class of the community, not shared by others, should receive a strict construction; and the courts will require that cases coming before them shall be brought clearly within the terms of such statutes before they will

[108] Pen. Code, § 4; People v. Soto, 49 Cal. 67; In re Mitchell, 1 Cal. App. 396, 82 Pac. 347. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[109] Commonwealth v. Davis, 12 Bush, 240; Commonwealth v. Trent, 117 Ky. 34, 77 S. W. 390; Lyons v. Hodgen & Miller, 10 Ky. Law Rep. 271. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[110] See People v. Teal, 196 N. Y. 372, 89 N. E. 1086, 25 L. R. A. (N. S.) 120; Rev. Codes, N. D. 1905, § 8538; State v. Fargo Bottling Works Co. (N. D.) 124 N. W. 387, 26 L. R. A. (N. S.) 872; Wilson's Rev. & Ann. St. Okl. 1903, § 5144; Morris v. Territory, 1 Okl. Cr. 617, 99 Pac. 760; B. & C. Comp., Or. § 2192; State v. Dunn, 53 Or. 304, 99 Pac. 278; Hurd's Rev. St. 1909, Ill., c. 131, § 1; Peterson v. Currier, 62 Ill. App. 163; Williams v. Territory (Ariz.) 108 Pac. 243, 27 L. R. A. (N. S.) 1032. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

be held applicable thereto.[111] But a statute cannot be said to be in derogation of common right unless it is confined in its operation to a particular individual or set of men, separate and apart from the rest of the community.[112] Moreover, the rights infringed upon by the statute must be such as would be enjoyed by the persons affected at common law, or as a part of the general liberty which belongs to them under our system of government. Thus, laws for the protection of married women, infants, and persons of unsound mind are not regarded as being in derogation of their common rights. But if a statute, for any cause, disables any persons of full age and sound mind (such as "spendthrifts") from making contracts and otherwise dealing freely with their own property, it is to be construed strictly; for although it may be founded in wise policy and a just regard for the public welfare, it is in derogation of private rights.[113] So, also, statutes requiring gratuitous services from any class of citizens are against common right and to be construed strictly. For this reason, a law requiring attorneys at law to act as counsel for indigent persons in civil cases, without compensation, when assigned to that duty by the court, cannot be extended by construction so as to include criminal cases.[114] Again, the exclusion of any citizen or class of citizens from the privilege of giving evidence in the courts is opposed to natural right, and ought not to be extended beyond the letter of the statute.[115] And an act imposing upon suitors in the courts an "oath of

[111] Rothgerber v. Dupuy, 64 Ill. 452; Richardson v. Ainsa, 11 Ariz. 359, 95 Pac. 103; Fox's Adm'rs v. Commonwealth, 16 Grat. (Va.) 1; Peet v. City of East Grand Forks, 101 Minn. 523, 112 N. W. 1005; State v. Grymes, 65 W. Va. 451, 64 S. E. 728. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[112] Flint River Steamboat Co. v. Foster, 5 Ga. 194, 48 Am. Dec. 248. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[113] Smith v. Spooner, 3 Pick. (Mass.) 229; Jones v. Semple, 91 Ala. 182, 8 South. 557; Strong v. Birchard, 5 Conn. 357. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[114] Webb v. Baird, 6 Ind. 13. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[115] Pelham v. The Messenger, 16 La. Ann. 99. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

expurgation," that is, an oath of past loyalty to the government, and providing that if any person shall refuse to take such oath his suit shall be dismissed, must be subjected to a restrictive interpretation.[116] For the same reason, laws which impose restrictions upon trade or common occupations, or upon the alienation of property, are to be strictly construed, and are never extended to cases not within the expressed will of the legislature.[117] It is also said that an act authorizing an assessment for a street improvement is in derogation of individual rights, and must be strictly construed and rigorously observed. If there is a failure to comply with any material requirement of the statute, a sale of property for nonpayment of the assessment, or a lease based upon such a sale, will be invalid to convey either the title or the right of possession.[118] The same is true of estray laws. These, it is said, "like all others prescribing modes by which a party may be divested of his property without his consent, must be strictly construed, and a party claiming to have acquired a right and title to property by virtue of their provisions as against the original owner must affirmatively allege and prove that the mode prescribed by the statute for the acquisition of such title has, in every particular, been strictly followed." [119] Again, the policy of the law favors an equal distribution of the effects of a failing debtor among his creditors, and a statute which, by giving a lien to certain creditors, gives them a preference, should be construed with reasonable strictness.[120] In the

[116] Harrison v. Leach, 4 W. Va. 383. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[117] Richardson v. Emswiler, 14 La. Ann. 658; Sewall v. Jones, 9 Pick. (Mass.) 412; Mayor, etc., of City of Savannah v. Hartridge, 8 Ga. 23. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[118] Hopkins v. Mason, 61 Barb. (N. Y.) 469. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[119] Trumpler v. Bemerly, 39 Cal. 490. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[120] Chapin v. Persse & Brooks Paper Works, 30 Conn. 461, 79 Am. Dec. 263. But see ante, p. 378, as to construction of mechanics' lien laws. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

opinion of some of the courts, bankruptcy and insolvency laws are also in derogation of common right and should be strictly construed. Such statutes, it is said, are intended to deprive creditors of all remedy for the recovery of their debts, and therefore cannot be extended by implication beyond the fair and legitimate meaning of the terms used by the legislature.[121] But this opinion has been disputed, and there are respectable authorities holding that such statutes ought to be construed with liberality, as being remedial in their nature and beneficial in their effects.[122] It is true that laws relating to bankruptcy and insolvency operate with severity upon the debtor, since they deprive him of the control and disposition of all his property and subject him to heavy penalties for any fraud, concealment, or false dealing. It is true also that they restrict the creditors to one particular mode of obtaining payment of their claims, and often compel them to accept less than the full amount in discharge and satisfaction of their debts. And in these respects such statutes ought not to be enlarged by intendment or implication beyond the clear expression of the legislative meaning. But yet such laws are founded in a sound and wise public policy and are designed to accomplish beneficent results, and it would be an abuse of the power of interpretation if they were subjected to so narrow and severe a construction as to defeat the very objects which they are intended to promote. The construction should be strict as to the imposition of penalties, liberal as to the powers of the assignee and as to the rights of the creditors, and liberal also as to the discharge of an honest debtor. In Louisiana, it is held that laws in derogation of the commercial law, as, for instance, statutes changing the rules of the law merchant with respect to the negotiability of notes or the validity of a verbal promise to accept a bill

121 Salters v. Tobias, 3 Paige (N. Y.) 338; Calladay v. Pilkington, 12 Mod. 513. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

122 Campbell v. Perkins, 8 N. Y. 430; Mims v. Lockett, 20 Ga. 474; In re Muller, Deady, 513, Fed. Cas. No. 9,912. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

to be thereafter drawn, must be strictly construed.[123] It is also a corollary from the rule we are considering that where the intention of the legislature is to confer a privilege upon persons whose rights are to be affected by a statutory proceeding (such proceeding being in derogation of their rights of property), and the language is doubtful as to the extent of the privilege, it is the duty of the courts to give to it the largest construction, in favor of the privilege, which the language employed will fairly permit.[124]

Eminent Domain

Since the exercise of the power of eminent domain is in derogation of common right, and is a high exertion of the paramount rights of the sovereign, it must be hedged about with all needful precautions for the protection and security of the citizen. And for this reason it is held that statutes authorizing the appropriation of private property for public use must be strictly construed.[125] An intention to authorize such taking will never be presumed, nor deduced from anything but clear and unambiguous terms. Espe-

[123] Crowell v. Van Bibber, 18 La. Ann. 637. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[124] Walker v. City of Chicago, 56 Ill. 277. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[125] Harvey v. Aurora & G. R. Co., 174 Ill. 295, 51 N. E. 163; Gillette v. Aurora Rys. Co., 228 Ill. 261, 81 N. E. 1005; Goddard v. Chicago & N. W. R. Co., 104 Ill. App. 526; Painter v. St. Clair, 98 Va. 85, 34 S. E. 989; Norfolk & W. R. Co. v. Lynchburg Cotton Mills Co., 106 Va. 376, 56 S. E. 146; Chesapeake & O. R. Co. v. Walker, 100 Va. 69, 40 S. E. 633; Edgerton v. Huff, 26 Ind. 35; People ex rel. Washburn v. Common Council, etc., of City of Gloversville, 128 App. Div. 44, 112 N. Y. Supp. 387; Johnson City Southern R. Co. v. South & W. R. Co., 148 N. C. 59, 61 S. E. 683; Central Union Tel. Co. v. Columbus Grove, 28 Ohio Cir. Ct. R. 131; Puyallup v. Lacey, 43 Wash. 110, 86 Pac. 215; Fay v. Macfarland, 32 App. D. C. 295; Macfarland v. Moore, 32 App. D. C. 213; Campbell v. Youngson, 80 Neb. 322, 114 N. W. 415; Culver v. Hayden, 1 Vt. 359; Hyland v. President, etc., of Village of Ossining, 57 Misc. Rep. 212, 107 N. Y. Supp. 225; Bogart v. Castor, 87 Ind. 244; Ellis v. Kenyon, 25 Ind. 134. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320; "Eminent Domain," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 25, 30, 34, 43, 44.*

cially is this the case with regard to the delegation of this power to private corporations. Such a corporation will never be presumed to be invested with the power. If it claims the right to condemn property for its uses, it must show a grant of such power.[126] Nor will a grant of the power be enlarged by mere implication. Thus, if the charter of a corporation gives it the right to appropriate private property for certain enumerated purposes, it will possess no authority to take property for any other purposes, and no such extension of its powers can be deduced by mere inference from the terms of the grant.[127] At the same time, laws delegating this power to corporations are not to be construed so strictly or literally as to defeat the evident purposes of the legislature. They are to receive a reasonably strict and guarded interpretation, and the powers granted will extend no further than expressly stated or than is necessary to accomplish the general scope and purpose of the grant. If there remains a doubt as to the extent of the power, after all reasonable intendments in its favor, the doubt should be solved adversely to the claim of pow-

[126] Phillips v. Dunkirk, W. & P. R. Co., 78 Pa. 177; Allen v. Jones, 47 Ind. 438; In re Water Com'rs of Amsterdam, 96 N. Y. 351; Adams v. Saratoga & W. R. Co., 10 N. Y. 328; Fork Ridge Baptist Cemetery Ass'n v. Redd, 33 W. Va. 262, 10 S. E. 405; Gilmer v. Lime Point, 19 Cal. 47; In re Opening of Roffignac Street, 7 La. Ann. 76; Martin v. Rushton, 42 Ala. 289; Southern Illinois & M. Bridge Co. v. Stone, 174 Mo. 1, 73 S. W. 453, 63 L. R. A. 301; Claremont R. & Lighting Co. v. Putney, 73 N. H. 431, 62 Atl. 727; Minnesota Canal & Power Co. v. Koochiching Co., 97 Minn. 429, 107 N. W. 405, 5 L. R. A. (N. S.) 638; Mull v. Indianapolis & C. Traction Co., 169 Ind. 214, 81 N. E. 657. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320; "Eminent Domain," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 25, 30, 34, 43, 44.*

[127] Currier v. Marietta & C. R. Co., 11 Ohio St. 228. And see South & N. A. R. Co. v. Highland Ave. & B. R. Co., 119 Ala. 105, 24 South. 114; Waterbury v. Platt Bros. & Co., 75 Conn. 387, 53 Atl. 958, 60 L. R. A. 211, 96 Am. St. Rep. 229; Minnesota Canal & Power Co. v. Pratt, 101 Minn. 197, 112 N. W. 395, 11 L. R. A. (N. S.) 105. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320; "Eminent Domain," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 25, 30, 34, 43, 44.*

er.[128] It is held that a statute giving to railroad companies the right of eminent domain will not be so construed as to allow such a company to appropriate a portion of the right of way of another railroad for the purposes of a parallel line, if such a result can be avoided by any reasonable construction of the act.[129] On the same general principle, it is held that a statute authorizing the impressment of private property, to serve the military necessities of the government in time of war, or for the use of health officers in times of dangerous epidemic sickness, must be strictly construed, and exactly followed by those acting under it.[130]

Police Regulations

Statutes enacted by the legislature in the exercise of the police power, for the promotion or preservation of the public safety, health, or morals, may sometimes impinge upon the liberty of individuals, by restricting their use of their property, or abridging their freedom in the conduct of their business. When this is the case, such statutes ought always to receive such a construction as will carry out the purpose and intention of the legislature with the least possible interference with the rights and liberties of private persons.[131] For example, a law regulating the practice of

[128] New York & H. R. Co. v. Kip, 46 N. Y. 546, 7 Am. Rep. 385. See, also, Tide Water Canal Co. v. Archer, 9 Gill & J. (Md.) 479; Macfarland v. Elverson, 32 App. D. C. 81. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. §§ 320; "Eminent Domain," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 25, 30, 34, 43, 44.*

[129] Illinois Cent. R. Co. v. Chicago, B. & N. R. Co., 122 Ill. 473, 13 N. E. 140. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320; "Eminent Domain," Dec. Dig. (Key No.) § 8; Cent. Dig. §§ 25, 30, 34, 43, 44.*

[130] White v. Ivey, 34 Ga. 186; Pinkham v. Dorothy, 55 Me. 135. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320; "War," Dec. Dig. (Key No.) § 14; Cent. Dig. § 57; "Health," Dec. Dig. (Key No.) § 23; Cent. Dig. § 26.*

[131] See In re Jacobs, 98 N. Y. 98, 50 Am. Rep. 636; Stewart v. Commonwealth, 10 Watts (Pa.) 306; Carberry v. People, 39 Ill. App. 506; Shiel v. Mayor, etc., of Sunderland, 6 Hurl. & N. 796; Brady v. Northwestern Ins. Co., 11 Mich. 425; People v. Sommer, 55 Misc. Rep. 55, 106 N. Y. Supp. 190; Chicago, M. & St. P. Ry. Co. v. Voelker, 129 Fed. 522, 65 C. C. A. 226, 70 L. R. A. 264; Lagler

medicine, and imposing penalties upon persons who engage in the practice of that profession without complying with its provisions, though a valid and wholesome police regulation, is penal in its character and should be strictly construed.[132] The same is true of statutes or ordinances establishing fire limits in populous cities, and prohibiting the erection of wooden buildings within such limits.[133] And similar principles will be found to be applicable to laws regulating the operation of railways in the interests of the public safety, to those which concern the purity of food products, to those which restrict the right to engage in the sale of intoxicants and other articles deemed noxious or dangerous, to those which place restrictions upon the freedom of contract,[134] and to many other classes of enactments designed to further the general welfare by derogating from the liberty of a few.

v. Bye, 42 Ind. App. 592, 85 N. E. 36; Nance v. Southern Ry. Co., 149 N. C. 366, 63 S. E. 116; Young v. Madison County, 137 Iowa, 515, 115 N. W. 23; Willis v. Bayles, 105 Ind. 363, 5 N. E. 8; Gray v. Stewart, 70 Kan. 429, 78 Pac. 852, 109 Am. St. Rep. 461; Commonwealth v. Beck, 187 Mass. 15, 72 N. E. 357; Wheelwright v. Commonwealth, 103 Va. 512, 49 S. E. 647. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[132] Brooks v. State, 88 Ala. 122, 6 South. 902; State v. Biggs, 133 N. C. 729, 46 S. E. 401, 64 L. R. A. 139, 98 Am. St. Rep. 731. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320; "Physicians and Surgeons," Dec. Dig. (Key No.) § 5; Cent. Dig. § 5.*

[133] Brown v. Hunn, 27 Conn. 332, 71 Am. Dec. 71. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

[134] Cleveland, C., C. & St. L. Ry. Co. v. Henry, 170 Ind. 94, 83 N. E. 710; Smith v. Spooner, 3 Pick. (Mass.) 229. Although an act to regulate the sale of intoxicants contains penal clauses, it is regarded as a general revenue and remedial statute, and given a liberal, and at the same time reasonable, construction in aid of the remedy, rather than a strict and narrow one, in the interest only of those who violate its provisions, and in construing it the court will consider its objects and purposes so as to effectuate them. United States ex rel. Stevens v. Richards, 33 App. D. C. 410. *See "Statutes," Dec. Dig. (Key No.) § 239; Cent. Dig. § 320.*

LAWS AUTHORIZING SUMMARY PROCEEDINGS

139. Statutes authorizing summary proceedings must be construed with strictness, and must be exactly followed by those who act under or in pursuance of them.

When the object of a statute is remedial, it is to be construed liberally so that it may accomplish the purposes for which it was designed. But when a remedy is sought to be obtained by a summary proceeding, under a statute which is in derogation of the common law, the statute is to be strictly construed. Hence the courts, when looking at the remedy, will take care that it shall be made effectual, if possible, in the manner intended. But when scanning the proceedings to obtain that remedy, the courts will be strict and rigid in exacting a compliance with all the requirements of the statute.[135] "An act of Parliament," says Best, C. J., "which takes away the right of trial by jury, and abridges the liberty of the subject, ought to receive the strictest construction; nothing should be holden to come within its operation that is not expressly within the letter and spirit of the act." [136] For example, statutes authorizing proceedings by attachment must be construed strictly, and hence cannot be held applicable to cases which are not plainly within their terms.[137] "The proceeding in attachment, as

[135] Smith v. Moffat, 1 Barb. (N. Y.) 65; Logwood v. President, etc., of Planters' & Merchants' Bank of Huntsville, Minor (Ala.) 23; Judson v. Smith, 104 Mo. 61, 15 S. W. 956; Omaha Sav. Bank v. Rosewater, 1 Neb. (Unof.) 723, 96 N. W. 68; Erkman v. Carnes, 101 Tenn. 136, 45 S. W. 1067. And see In re Roberts, 4 Kan. App. 292, 45 Pac. 942; Board of Com'rs of Petite Anse Drainage Dist. v. Iberia & V. R. Co., 117 La. 940, 42 South. 433; In re Robinson's Estate, 59 Misc. Rep. 323, 112 N. Y. Supp. 280; Mill v. Brown, 31 Utah, 473, 88 Pac. 609, 120 Am. St. Rep. 935. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[136] Looker v. Halcomb, 4 Bing. 183. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[137] Van Norman v. Jackson Circuit Judge, 45 Mich. 204, 7 N. W. 796; Mathews v. Densmore, 43 Mich. 461, 5 N. W. 669; Whitney v.

authorized by the statutes of the several states, is always viewed as a violent proceeding, a proceeding wherein the plaintiff, at the inception of his suit, seizes upon the property of the defendant without waiting to establish his claim before the judicial tribunals of the land, and the statute authorizing it has invariably received a strict construction." [138] But it must be remarked that this rule has been changed by statute in some of the states, the legislature directing that the attachment laws shall be liberally construed. "The property of one person," says the court in Ohio, "cannot be subjected to the payment of the debt of another without invading the right of private property; and whatever may be the competency of the legislative power to create such a liability by way of forfeiture, penalty, or confiscation, upon the ground of public policy, it cannot be done by mere implication; and in the absence of any provision expressly declaring the public duty exacted and providing for such liability, a statute providing for the collection of claims by a summary proceeding against property by its seizure or attachment must be construed as simply providing a remedy for the enforcement of liabilities, and not as creating new liabilities upon the owners of the property, not arising at common law." [139] So, also, any statute which authorizes an arrest without a direct charge of guilt should be construed with great strictness. Thus, where a statute authorizes the issuance of a warrant, in certain cases, upon the oath of the prosecutor that he "has good reason to believe" that an offense has been committed, it must be exactly followed; and if he merely swears that he "has been credibly informed," etc., this will not be enough to justify the issuing of a warrant.[140] So again, the terms

Brunette, 15 Wis. 61; Blake v. Sherman, 12 Minn. 420 (Gil. 305); Wilkie v. Jones, Morris (Iowa) 97; Musgrave v. Brady, Morris (Iowa) 456; Burch v. Watts, 37 Tex. 135. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[138] Wilkie v. Jones, Morris (Iowa) 97. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[139] The Ohio v. Stunt, 10 Ohio St. 582. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[140] State v. Dale, 3 Wis. 795. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

and conditions prescribed by a statute, providing for constructive service of process, must be strictly complied with.[141] And a statute requiring a defendant in civil actions to file an affidavit of defense to the action, and authorizing the plaintiff, on failure of such affidavit, to have judgment entered up, is in derogation of the defendant's right to a trial by jury, and must be strictly construed.[142] A statute giving a remedy by motion against public officers on their official bonds, being summary and in derogation of common law, should be construed with strictness.[143] Thus, a statute which authorizes a summary proceeding against a sheriff, and his amercement in damages, for a failure to return a writ of execution at the proper time, is highly penal in its character, and any person who claims that this process should be put into effect against the officer must bring his case within both the letter and the spirit of the law.[144] So a statute authorizing the courts to render judgment, without a separate action, against sureties on bonds given in the course of legal proceedings, must be construed strictly and not extended by implication.[145] Again, a party who claims goods under a constable's sale upon a distress for rent must prove affirmatively that all the statutory requirements of such a sale have been com-

[141] Guaranty Trust & Safe-Deposit Co. v. Green Cove Springs & M. R. Co., 139 U. S. 137, 11 Sup. Ct. 512, 35 L. Ed. 116; Meyer v. Kuhn, 65 Fed. 705, 13 C. C. A. 298; Stewart v. Stringer, 41 Mo. 400, 97 Am. Dec. 278; People v. Huber, 20 Cal. 81; Pinkney v. Pinkney, 4 G. Greene (Iowa) 324; Edrington v. Allsbrooks, 21 Tex. 186; Israel v. Arthur, 7 Colo. 5, 1 Pac. 438; City of Detroit v. Detroit City R. Co. (C. C.) 54 Fed. 1. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[142] Wall v. Dovey, 60 Pa. 212. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[143] Hearn v. Ewin, 3 Cold. (Tenn.) 399; Rice v. Kirkman, 3 Humph. (Tenn.) 415; Scogins v. Perry, 46 Tex. 111; Robinson v. Schmidt, 48 Tex. 13. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[144] Moore v. McClief, 16 Ohio St. 51. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[145] Willard v. Fralick, 31 Mich. 431. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

plied with.[146] So if, by a private act, the property of a person is directed to be sold by the surveyor general without any warranty, and the money to be paid to certain creditors, it does not take away the rights of third persons, but amounts only to a quitclaim of any right or interest of the state.[147]

REMEDIAL STATUTES

140. Remedial statutes are to be liberally construed with a view to effectuate the purposes of the legislature; and if there be any doubt or ambiguity, that construction should be adopted which will best advance the remedy provided and help to suppress the mischief against which it was aimed.[148]

It is "an old and unshaken rule in the construction of statutes that the intention of a remedial statute will always prevail over the literal sense of its terms, and therefore when the expression is special or particular, but the reason

[146] Murphy v. Chase, 103 Pa. 260. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[147] Jackson ex dem. Gratz v. Catlin, 2 Johns. (N. Y.) 248, 3 Am. Dec. 415. *See "Statutes," Dec. Dig. (Key No.) § 244; Cent. Dig. § 325.*

[148] Smith v. Moffat, 1 Barb. (N. Y.) 65; Hudler v. Golden, 36 N. Y. 446; White v. The Mary Ann, 6 Cal. 462, 65 Am. Dec. 523; Cullerton v. Mead, 22 Cal. 95; Jackson v. Warren, 32 Ill. 331; Wilber v. Paine, 1 Ohio, 251; Litch v. Brotherson, 16 Abb. Prac. (N. Y.) 384; Hoguet v. Wallace, 28 N. J. Law, 523; State ex rel. Griswold v. Blair, 32 Ind. 313; Fox v. Sloo, 10 La. Ann. 11; Sprowl v. Lawrence, 33 Ala. 674; State v. Canton, 43 Mo. 48; Mason v. Rogers, 4 Litt. (Ky.) 375; State v. Lynch, 28 R. I. 463, 68 Atl. 315; Wall v. Platt, 169 Mass. 398, 48 N. E. 270; Traudt v. Hagerman, 27 Ind. App. 150, 60 N. E. 1011; Ketcham v. New Albany & S. R. Co., 7 Ind. 391; Harrison v. National Bank of Monmouth, 108 Ill. App. 493; Tousey v. Bell, 23 Ind. 423; Becker & Degen v. Brown, 65 Neb. 264, 91 N. W. 178; Union Brewing Co. v. Ehlhardt, 139 Mo. App. 129, 120 S. W. 1193; Robinson v. Harmon, 157 Mich. 276, 122 N. W. 106; Everson v. General Accident Fire & Life Assur. Corp., Limited, of Perth, Scotland, 202 Mass. 169, 88 N. E. 658; State v. Central Vermont R. Co., 81 Vt. 459, 71 Atl. 193, 21 L. R. A. (N. S.) 949; Asheville Land Co. v. Lange, 150 N. C. 26, 63 S. E. 164; Northern Indiana Ry. Co. v. Lincoln

is general, the expression shall be deemed general." [149] "The rule in construing remedial statutes, though it may be in derogation of the common law, is that everything is to be done in advancement of the remedy that can be done consistently with any fair construction that can be put upon it." [150] Especially in the construction of a remedial statute which has for its end the promotion of important and beneficial public objects, a large construction is to be given where it can be done without doing actual violence to its terms.[151] But still it is to be remembered that the rule of construction whereby the operation of a statute may sometimes be judicially extended beyond its words does not apply, even in the case of a remedial statute, where the words are too explicit to admit of the belief that such an extension of its operation was intended by the legislature.[152]

What are Remedial Statutes

"Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever. And this being done, either by enlarging the common law where it was too narrow and circumscribed, or by restraining it where it was too lax and luxuriant, hath occasioned another subordinate division of remedial acts of Par-

Nat. Bank (Ind. App.) 92 N. E. 384. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[149] Brown v. Pendergast, 7 Allen (Mass.) 427. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[150] Chicago, B. & Q. R. Co. v. Dunn, 52 Ill. 260, 4 Am. Rep. 606. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[151] Town of Wolcott v. Pond, 19 Conn. 597. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[152] Farrel Foundry v. Dart, 26 Conn. 376; Learned v. Corley, 43 Miss. 687; City of Detroit v. Detroit United Ry., 156 Mich. 106, 120 N. W. 600. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

liament into enlarging and restraining statutes." [153] To this it should be added that a law is equally entitled to be considered a remedial statute whether it remedies a defect of the common law or of the pre-existing body of statute law. And it may be remarked that the lines of distinction between penal and remedial statutes are no longer very clearly drawn, since many modern statutes are penal when regarded in one aspect, but remedial when considered in another light. They may give a valuable and much needed remedy against an existing injustice, hardship, or oppression, and therefore are to be liberally and beneficially interpreted, notwithstanding the fact that a violation of their provisions may be followed by consequences which are very distinctly penal in their character. Thus a statute of Michigan provided that every railroad company should, on due payment of the freight legally chargeable, transport property to and from regular stopping places, under penalty of $100 for each violation, to be recovered by the party aggrieved. It was held that this was not a penal statute, strictly speaking, but remedial in its effect.[154] And the same ruling has been made on a law designed to furnish a complete statutory scheme to secure and maintain the fencing of railroads.[155]

Examples of Remedial Statutes and Their Construction

It may be stated in general terms that any statute which gives a remedy or means of redress where none existed before, or which creates a right of action in an individual, or a particular class of individuals, is remedial, within the meaning of this rule.[156] Thus, a statute giving to a person

[153] 1 Bl. Comm. 86. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[154] Robinson v. Harmon, 157 Mich. 272, 117 N. W. 664. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[155] Vandalia R. Co. v. Miller (Ind. App.) 90 N. E. 907. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[156] Neal v. Moultrie, 12 Ga. 104; Kennealy v. Leary, 67 N. J. Law, 435, 51 Atl. 475; Western Union Tel. Co. v. McDaniel, 103 Ind. 294, 2 N. E. 709. But see Chicago & N. E. R. Co. v. Sturgis, 44 Mich. 538, 7 N. W. 213, holding that a statute, even when it is remedial, must be followed with strictness where it gives a remedy against a

injured by reason of a defect in a highway a right of action in damages against the municipal corporation which was charged with the duty of keeping the highway in repair, is remedial, even though it authorizes the recovery of double damages.[157] So, also, a statute for the collection of claims against steamboats and other water craft, which authorizes proceedings against the same by name, is remedial in its nature, being designed to afford a convenient and speedy remedy against the property of the persons liable, and to provide some means of safety in the collection of the claims by fixing the liability of the property.[158] Again, where an act authorized suits to be brought against insurance companies in the county where the "property insured" might be located, and a supplementary act provided that all the provisions of the former statute should be applicable to life insurance companies, it was held that, under said acts, suit might be brought against a life insurance company in the county where the person insured resided.[159] On this principle, it is generally held (although there are some decisions to the contrary) that statutes giving a right of action in damages to the surviving relatives or next of kin of a person whose death is caused by the wrongful act,

party who would not otherwise be liable. Note, also, Commonwealth v. Glover, 132 Ky. 588, 116 S. W. 769, where it is stated that, when a statute gives a right or provides a remedy, the manner provided in the statute whereby the right may be acquired must be strictly followed. And see, to the same general effect, City of Boston v. Shaw, 1 Metc. (Mass.) 130; Commonwealth v. Howes, 15 Pick. (Mass.) 231. It is perhaps on the ground stated in the text that we can approve a recent decision of the court in New Mexico, to the effect that statutes providing for the recovery of money lost at gaming are remedial in their nature, designed to discourage gambling by making the gamester's winnings insecure, and should not be too narrowly construed. Mann v. Gordon, 110 Pac. 1043. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[157] Reed v. Inhabitants of Northfield, 13 Pick. (Mass.) 94, 23 Am. Dec. 662. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[158] The Ohio v. Stunt, 10 Ohio St. 582. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[159] Quinn v. Fidelity Beneficial Ass'n, 100 Pa. 382. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

neglect, or default of another are remedial and should be liberally construed.[160] The court in New Jersey, speaking of such a statute, says: "It is entirely and in the highest sense remedial in its nature. Its object was to abolish the harsh and technical rule of the common law, actio personalis moritur cum persona. The rule had nothing but prescriptive authority to support it; it was a defect in the law, and this statute was designed to remove that defect. It is therefore entitled to receive the liberal construction which appertains to remedial statutes. The mischief to be redressed was the nonexistence of a remedy for an admitted wrong. It is clearly therefore the duty of the court to advance the remedy."[161] So again, statute provisions for indemnity for loss accruing to one citizen, by means of a privilege given to another by the legislature, ought to receive a liberal construction in favor of the citizen damnified.[162] And a statute providing for the determination of claims to real estate and to quiet title to the same is remedial and should be liberally construed.[163]

A statute intended to legitimate the issue of marriages otherwise void is remedial in its nature and to be liberally construed; and hence, in such an act, the words "inherit,"

[160] Haggerty v. Central R. Co., 31 N. J. Law, 349; Merkle v. Bennington Tp., 58 Mich. 156, 24 N. W. 776, 55 Am. Rep. 666; Bolinger v. St. Paul & D. R. Co., 36 Minn. 418, 31 N. W. 856, 1 Am. St. Rep. 680; Wabash, St. L. & P. Ry. Co. v. Shacklett, 10 Ill. App. 404; Hayes v. Williams, 17 Colo. 465, 30 Pac. 352; Beach v. Bay State Steamboat Co., 16 How. Prac. (N. Y.) 1. See, per contra, Pittsburg, C. & St. L. Ry. Co. v. Hine, 25 Ohio St. 629; Hamilton v. Jones, 125 Ind. 176, 25 N. E. 192. The case last cited holds such a statute to be subject to the rule of strict construction, not, however, on the ground that it is not a remedial statute, but solely on the ground of its being in derogation of the common law, as to which, see ante, pp. 367–379. On the subject of the proper construction of these statutes, see Tiffany, Death by Wr. Act, § 32. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[161] Haggerty v. Central R. Co., 31 N. J. Law, 349. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[162] Boston & R. Mill Corp. v. Gardner, 2 Pick. (Mass.) 33. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[163] Holmes v. Chester, 26 N. J. Eq. 79. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

"heir," and "joint heir" will be construed to give to legitimated children all the rights of inheritance and succession which would attach to them had they been born in lawful wedlock.[164] Acts providing for the recording of conveyances, making such records constructive notice, and relieving subsequent purchasers and incumbrancers in good faith from the effect of unrecorded conveyances, are remedial and to be construed liberally.[165] The same rule was applied, in a case in Illinois, to a statute designed to remedy the evils consequent upon the destruction of public records by a fire, which provided for the recording of certified copies of conveyances and extracts from court records, provided a form of action to establish a destroyed record, and gave the courts jurisdiction to inquire into and settle titles. It was said to be emphatically a remedial act and entitled to a liberal construction.[166] Again, statutes exempting homesteads from forced sale on judicial process should receive such a construction as to carry out the liberal and beneficent policy of the legislature. But parties must bring themselves within their provisions, at least in spirit, before they can claim exemption under them; for, without some special statute making the exemption, all the property of a debtor will be subject to levy and sale.[167] A statute exempting from attachment and execution "the tools of any debtor necessary for his trade or occupation" is a beneficent and remedial statute and should not be narrowly construed; and hence it will be held to include not merely the tools used by the tradesman with his own hands, but also such,

[164] Brower v. Bowers, 1 Abb. Dec. (N. Y.) 214; Beall v. Beall, 8 Ga. 210; Swanson v. Swanson, 2 Swan. (Tenn.) 446. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[165] Connecticut Mut. Life Ins. Co. v. Talbot, 113 Ind. 373, 14 N. E. 586, 3 Am. St. Rep. 655; Tate v. Rose, 35 Utah, 229, 99 Pac. 1003. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[166] Smith v. Stevens, 82 Ill. 554. And see In re Patterson's Estate, 155 Cal. 626, 102 Pac. 941, 26 L. R. A. (N. S.) 654, 132 Am. St. Rep. 116. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[167] Charless v. Lamberson, 1 Iowa, 435, 63 Am. Dec. 457. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

in character and amount, as are necessary to enable him to prosecute his appropriate business in a convenient and usual manner, including also, in a proper case, the tools used by journeymen or apprentices and constituting the necessary means of their employment.[168] A law validating irregularities in proceedings for the formation of school districts is to be liberally construed in furtherance of its object.[169] And a statute authorizing a court to open, re-examine, and correct the accounts of a public officer is highly remedial.[170] So also, an act relating to the official bonds of public officers concerns the public rights and interests, and should be liberally construed with a view to making it effective against the evil which it was intended to abate, where that can be done without depriving any individual of his just rights.[171] On the same principle, a statute authorizing and requiring an officer of a city to take proper steps to procure the opening and reversal of all judgments against the city which he may have reason to believe were founded in fraud or obtained by collusion, is for the benefit of the public and designed to prevent fraud, and should therefore be liberally construed.[172]

[168] Howard v. Williams, 2 Pick. (Mass.) 80. See, also, Alvord v. Lent, 23 Mich. 369. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[169] First School Dist. of Stratford v. Ufford, 52 Conn. 44. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[170] White County v. Key, 30 Ark. 603. See *"Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[171] Ex parte Plowman, 53 Ala. 440. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

[172] Sharp v. Mayor, etc., of City of New York, 31 Barb. (N. Y.) 572. *See "Statutes," Dec. Dig. (Key No.) § 236; Cent. Dig. §§ 317, 324, 325.*

STATUTES REGULATING PROCEDURE

141. Statutes relating to the administration of justice in the courts, and designed to render the same more simple, speedy, or efficacious, are remedial in character, and should be liberally construed to promote their objects.

This rule applies generally to all statutes which are intended to simplify procedure in the courts, to abolish technical requirements and obviate the effect of technical objections, to prevent delays, or to give to suitors a more effective method of presenting and enforcing their rights and claims.[173] Thus an act which tends to simplify procedure in the courts, by abolishing all the forms of action ex contractu except that of assumpsit, should receive a liberal construction.[174] The same is true of statutes providing for amendments in pleadings or legal process. They are to be liberally construed in furtherance of the object of securing trials upon the merits.[175] And a law altering the mode of procedure in point of form, in a suit pending when the act was passed, so as to prevent a delay and hasten the time of trial, is remedial in its nature and should be liberally construed.[176] Again, statutes authorizing a change of venue in cases where it is alleged that a fair and impartial trial cannot be had in the court where suit is originally brought are very important to the due administration of justice, and ought to be so construed as to secure the right and make

[173] Heman v. McNamara, 77 Mo. App. 1; Thrift v. Thrift, 30 R. I. 357, 75 Atl. 484; McGill v. Leduc, 3 Mo. 398; Mitchell v. Mitchell, 1 Gill (Md.) 66; Sawyer v. Childs, 83 Vt. 329, 75 Atl. 886; Cornman v. Hagginbotham, 227 Pa. 549, 76 Atl. 721. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[174] Jones v. Gordon, 124 Pa. 263, 16 Atl. 862. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[175] Bolton v. King, 105 Pa. 78; Fidler v. Hershey, 90 Pa. 363; Bulkley v. Andrews, 39 Conn. 523. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[176] People v. Tibbets, 4 Cow. (N. Y.) 384. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

it effective.[177] So, also, statutory provisions in relation to the submission of controversies to arbitration are beneficial in their nature and founded in good public policy, and should be construed with liberality.[178] On the same general principle, statutes giving or extending a right of appeal are always liberally construed in furtherance of justice, and the courts will endeavor to avoid putting upon them such a construction as would work a forfeiture of the right in the particular case.[179] The principle of liberal construction will also be applied to a statute providing for the continuance of all process, pleadings, and proceedings during a vacancy in the office of the judge of the court,[180] and to one authorizing the amendment of defective bonds or recognizances.[181] Again, where a statute provides that evidence of a certain kind shall be admitted to prove a fact, it is not to be construed as excluding all other evidence of the fact.[182]

But where a statute gives a new and extraordinary remedy, and directs how the right to the remedy is to be acquired or enjoyed, the act should be strictly construed, and the steps pointed out for the enjoyment of the remedy provided should be construed as mandatory, rather than directory. This rule was applied in a case where the statute

[177] Griffin v. Leslie, 20 Md. 15. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[178] Tuskaloosa Bridge Co. v. Jemison, 33 Ala. 476; Bingham's Trustees v. Guthrie, 19 Pa. 418. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[179] Pearson v. Lovejoy, 53 Barb. (N. Y.) 407; Houk v. Barthold, 73 Ind. 21; Womelsdorf v. Heifner, 104 Pa. 1; Arceneaux v. De Benoit, 21 La. Ann. 673; Converse v. Burrows, 2 Minn. 229 (Gil. 191). See, also, Vigo's Case, 21 Wall. 648, 22 L. Ed. 690; People v. Sholem, 238 Ill. 203, 87 N. E. 390; Mitchell v. California & O. S. S. Co., 154 Cal. 731, 99 Pac. 202; Williams v. Miles, 62 Neb. 566, 87 N. W. 315. Compare Cain v. State, 36 Ind. App. 51, 74 N. E. 1102. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[180] United States v. Murphy (D. C.) 82 Fed. 893. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[181] Lewellyn v. Ellis, 50 Tex. Civ. App. 453, 115 S. W. 84. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[182] Green v. Gill, 8 Mass. 111; Commonwealth v. Cutter, 8 Mass. 279. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

gave to the court in which judgments against a certain county should be rendered, on its bonds, authority to levy and assess a tax to pay the judgment.[183] And it should be observed that special statutory jurisdiction is not to be extended by construction, though doubts may be resolved in favor of jurisdiction where no established law is violated.[184] If a statute deals with the courts or their process or procedure, the words employed by the legislature are to be construed in their proper technical sense, unless it plainly appears from the statute as a whole that they were meant to be understood in a popular sense.[185]

STATUTES AGAINST FRAUDS

142. Statutes against frauds, in so far as they operate upon the fraud or offense, are to be liberally construed, in order that justice may be promoted by counteracting the fraud or annulling the fraudulent transaction.

"Statutes against frauds are to be liberally and beneficially expounded. This may seem a contradiction to the last rule (that penal statutes are to be construed strictly), most statutes against frauds being in their consequences penal. But this difference is to be here taken: where the statute acts upon the offender, and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly; but when the statute acts upon the offense, by setting aside the fraudulent transaction, here it is to be construed liberally. Upon

[183] Campbellsville Lumber Co. v. Hubbert, 112 Fed. 718, 50 C. C. A. 435. But see Shields v. Johnson, 10 Idaho, 454, 79 Pac. 394, holding that the statute authorizing the issue of injunctions is to be liberally construed. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[184] Butler v. United States, 43 Ct. Cl. 497; Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 6 Pick. (Mass.) 376; Jones v. Newhall, 115 Mass. 244, 15 Am. Rep. 97. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

[185] President, etc., of Merchants' Bank v. Cook, 4 Pick. (Mass.) 405. *See "Statutes," Dec. Dig. (Key No.) § 243; Cent. Dig. § 324.*

this footing, the statute of 13 Elizabeth, c. 5, which avoids all gifts of goods, etc., made to defraud creditors and others, was held to extend by the general words to a gift made to defraud the queen of a forfeiture." [186] So in this country, also, statutes intended to prevent frauds upon creditors by secret and pretended transfers of property, as those which provide that the title to goods and chattels shall not pass by a sale without delivery, the vendor remaining in possession, unless the same is evidenced by a writing duly acknowledged, etc., are held to be salutary and beneficial and entitled to a liberal construction.[187] And a statute authorizing general assignments for the benefit of creditors, so framed as to prevent an insolvent debtor from giving preferences to some among his creditors at the expense of others, and thus tending to prevent fraud and injustice, should be liberally construed to the furtherance of that end.[188] The same rule and principle apply to the case of a statute which provides that "every sale, mortgage, or assignment which shall be made by debtors in contemplation of insolvency, and with the design to prefer one or more creditors to the exclusion in whole or in part of others, shall operate as an assignment and transfer of all the property and effects of such debtor, and shall inure to the benefit of all his creditors." An act of this character should be liberally construed to effectuate the intention of the legislature.[189] In New York, a statute provided that no member of the common council of a city, or any other officer of the municipal-

[186] 1 Bl. Comm. 88. See, also, Gorton v. Champneys, 1 Bing. 287; Cumming v. Fryer, Dud. (Ga.) 182; Carey v. Giles, 9 Ga. 253. *See "Fraudulent Conveyances," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 4–6.*

[187] Bank of United States v. Lee, 13 Pet. 107, 10 L. Ed. 81; Cadogan v. Kennett, 2 Cowp. 432. This rule is also applied to the "bulk sales laws" now in force in several states. See Hanna v. Hurley, 162 Mich. 601, 127 N. W. 710. *See "Fraudulent Conveyances," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 4–6.*

[188] Hahn v. Salmon (C. C.) 20 Fed. 801. *See "Assignments for Benefit of Creditors," Dec. Dig. (Key No.) § 105; Cent. Dig. § 341.*

[189] Terrill v. Jennings, 1 Metc. (Ky.) 450. *See "Insolvency," Dec. Dig. (Key No.) § 3; Cent. Dig. § 2.*

ity, should be directly or indirectly interested in any contract, work, or business, the price or consideration of which was to be paid out of the city treasury. It was held that this law should not be narrowed by construction, but should be interpreted broadly and liberally to promote the end which the legislature had in view.[190] On the other hand, it is said that a statute providing penalties for loaning money on chattel mortgage notes in which the amount loaned is overstated, or in which a higher rate of interest is charged than the law allows, and making such mortgages and notes void, is distinctly penal, and should receive a strict construction.[191] And even where a law for the prevention or undoing of fraud is considered as salutary and beneficial, and therefore to be beneficially interpreted, the rule of liberal construction has its proper limits. It is not permissible, in the endeavor to hunt out and extirpate frauds, to subject the words of the legislature to a fantastic or extravagant interpretation, nor to put upon them a meaning which they could not reasonably be made to bear. For example, a statute annulling any "willfully false claim" should not be construed as applying to a case of mere discrepancy in the amount of a claim as filed, such as may not be inconsistent with good faith.[192] Again, a statute of New York was designed to prevent persons from transacting business under fictitious names. One W. brought an action against a railroad company for damages for an injury to a carriage belonging to him, but which was marked with the name of "W. Brothers." The railroad company attempted to defend on the ground that W. was amenable to the statute, since he was carrying on the business alone,

[190] Mullaly v. Mayor of New York, 6 Thomp. & C. 168. *See "Municipal Corporations," Dec. Dig. (Key No.) § 231; Cent. Dig. §§ 657–664.*

[191] Morin v. Newbury, 79 Conn. 338, 65 Atl. 156. And see State v. Chicago & N. W. R. Co., 128 Wis. 449, 108 N. W. 594. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

[192] Barber v. Reynolds, 44 Cal. 519, 533. *See "Statutes," Dec. Dig. (Key No.) § 241; Cent. Dig. §§ 322, 323.*

after his brother's retirement, in the former firm name. But it was held that the statute was not applicable to such a case as this, and the defense should not prevail.[193]

LEGISLATIVE GRANTS

143. Statutory grants by the legislature, when they delegate sovereign power, derogate from sovereign authority, or confer special benefits or exemptions, in derogation of common and equal rights, are to be construed strictly against the grantee.

Statutory grants, made by Congress or the legislature of a state, are not to be construed by the same rules which are applicable to grants or contracts between private persons. The words of a private grant are to be taken most strongly against the grantor. In the interpretation of a private contract, the courts are to adopt the construction which the parties mutually put upon it at the time of its making. But in the case of a legislative grant or contract, the fact that the instrument is a law, as well as a grant or contract, changes the aspect of the case and renders these rules inapplicable. Thus, in a case in Michigan, where the principles recognized as applicable to transactions between private parties were urged upon the court in connection with the interpretation of a legislative grant, it was said: "The fault of this reasoning is that it seeks to apply the principles which relate to common-law grants between private persons to an act of the legislature, which differs from a grant of a private person in that it is both a grant and a law, and, as such, the intent of the law is to be kept in view, and its purpose effectuated, whenever the subject-matter of the grant comes in controversy; and that construction must be placed upon it which will preserve and carry out the object of the legislature, however such construction may conflict with the principles of the common

[193] Wood v. Erie Ry. Co., 72 N. Y. 196, 28 Am. Rep. 125. *See "Partnership," Dec. Dig. (Key No.) § 64; Cent. Dig. § 88.*

law, or prevent the attaching of equities which would spring from transactions between private parties." [194] Again, although a statute may contain the elements of a compact between the government and an individual, nevertheless it should be construed according to the rules for construing statutes, and not according to those which are applicable in the case of contracts. In cases of contract, the court is to give effect to the real intention of the parties, and therefore adopts their own interpretation, as shown by the contemporary construction which they have mutually put upon it. But in cases resting upon a statute, there is no mutuality of agreement to be sought out. The only will is that of the legislative power. Hence the contemporary construction of a statute given to it by an officer intrusted with its execution cannot be allowed to prevail against the true construction of the statute, on the ground of its embodying a contract.[195] This difference, however, between private and legislative grants, does not exclude the operation of all the subsidiary rules of interpretation. For instance, the familiar rule that a party cannot be allowed to claim under, and at the same time repudiate, any instrument, is applicable not only to contracts and conveyances but also to that class of statutes which grant new rights or privileges subject to certain conditions.[196] In general, however, the rule is well settled that statutory grants of property, franchises, or privileges in which the government has an interest are to be construed strictly in favor of the public and against the grantee, and nothing will pass except what is granted in clear and explicit terms.[197] And when there

[194] Jackson, L. & S. R. Co. v. Davison, 65 Mich. 416, 32 N. W. 726. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

[195] Union Pac. R. Co. v. United States, 10 Ct. Cl. 548. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

[196] Burrows v. Bashford, 22 Wis. 103. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

[197] Coosaw Min. Co. v. South Carolina ex rel. Tillman, 144 U. S. 550, 12 Sup. Ct. 689, 36 L. Ed. 537; Water Com'rs of Jersey City v. Mayor, etc., of City of Hudson, 13 N. J. Eq. 420; Bennett v. McWhorter, 2 W. Va. 441; People ex rel. State Board of Harbor Com'rs v. Kerber, 152 Cal. 731, 93 Pac. 878, 125 Am. St. Rep. 93; Crowder

is any doubt as to the proper construction of a statute granting a privilege, that construction should be adopted which is most advantageous to the interests of the government.[198] But yet, where the grant admits of two interpretations, one of which is more extended and the other more restricted, so that a choice is fairly open, and either may be adopted without a violation of the apparent objects of the grant, if, in such a case, one interpretation would render the grant inoperative, and the other would give it force and effect, the latter should be adopted.[199] And the maxim or rule that that without which a grant would not be effective is deemed to pass with the grant, though generally applied to grants of realty, is also proper to be observed in the construction of statutes of this kind.[200]

Delegation of Powers to Municipal Corporations

Municipal corporations "possess and may exercise those powers which are granted in express terms, also those necessarily implied or necessarily incident to the powers expressly granted, and lastly, those which are absolutely indispensable to the declared objects and purposes of the corporation. In this connection it may also be stated that it is regarded as a settled principle of law that where there is a fair and reasonable doubt as to the existence of a power

v. Fletcher, 80 Ala. 219; Town of Windfall City v. State ex rel., 172 Ind. 302, 88 N. E. 505; Conroy v. Perry, 26 Kan. 472; Cleaveland v. Norton, 6 Cush. (Mass.) 380; Jayne v. Imperial Irr. Co. (Tex. Civ. App.) 127 S. W. 1137. The rule that a grant by the United States is strictly construed against the grantee applies as well to grants to a state to aid in building railroads as to an act granting special privileges to a private corporation. Leavenworth, L. & G. R. Co. v. United States, 92 U. S. 733, 23 L. Ed. 634. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

[198] Hannibal & St. J. R. Co. v. Missouri River Packet Co., 125 U. S. 260, 8 Sup. Ct. 874, 31 L. Ed. 731. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

[199] Black, Const. Prohib. § 52; Mills v. St. Clair County, 8 How. 569, 12 L. Ed. 1201. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

[200] Portland Ry., Light & Power Co. v. Railroad Commission of Oregon (Or.) 105 Pac. 709, 109 Pac. 273. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

in such corporation, the courts will not uphold or enforce its execution." [201] For example, statutes or charters delegating the power of taxation to municipal corporations will be strictly construed, and such delegation should be made in clear and unambiguous terms, and the grant will not be extended by implication or inference.[202] The reason is that the power of taxation, being a sovereign power, can be exercised by the legislature only when and as conferred by the constitution, and by municipal corporations only when unequivocally delegated to them by the legislative body. The charter of a municipality, in respect to the powers of taxation which it grants, will not therefore receive a liberal or expansive interpretation, and the municipality will not have authority to lay any other taxes, or to tax any other property, or to impose taxes for any other purpose, than as its charter or the general laws of the state relating to municipal corporations expressly or by necessary implication allow.[203] The grant to a municipal corporation of the power to provide for the levy and collection of special taxes for the

[201] Paine v. Spratley, 5 Kan. 525. See, also, Ottawa v. Carey, 108 U. S. 110, 2 Sup. Ct. 361, 27 L. Ed. 669; Cooley, Const. Lim. 192–194; Black, Const. Law (3d Ed.) 514. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Municipal Corporations," Dec. Dig. (Key No.) §§ 52–62; Cent. Dig. §§ 141–155.*

[202] City of St. Louis v. Laughlin, 49 Mo. 559; Moseley v. Tift, 4 Fla. 402; City of Alton v. Ætna Ins. Co., 82 Ill. 45; Wisconsin Tel. Co. v. City of Oshkosh, 62 Wis. 32, 21 N. W. 828; Mason v. Police Jury of Parish of Tensas, 9 La. Ann. 368, per Buchanan, J. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Municipal Corporations," Dec. Dig. (Key No.) §§ 52–62; Cent. Dig. §§ 141–155.*

[203] Mays v. City of Cincinnati, 1 Ohio St. 268; Lima v. Lima Cemetery Ass'n, 42 Ohio St. 128, 51 Am. Rep. 809. "When the power (of municipal taxation) is found to have been conferred, if any question arises upon its extent or application, the rule is that the power must be strictly construed. It is a reasonable presumption that the state, which is the depositary and source of all authority on the subject, has granted in unmistakable terms all it has intended to grant at all. Municipal authorities, therefore, when they assume to tax, must be able to show warrant therefor in the words of the grant, which alone can justify their action." Cooley, Tax'n, 276. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Municipal Corporations," Dec. Dig. (Key No.) §§ 52–62; Cent. Dig. §§ 141–155.*

improvement of streets and alleys upon real estate adjacent to such improvements, does not include the power to provide for the sale and conveyance of such real estate in case of nonpayment.[204] So, also, in the absence of an express grant of power, a municipal corporation can neither borrow money, nor issue negotiable paper, nor become a party to such paper, nor become a stockholder in a private corporation, nor incur debts in aid of such private corporation.[205] To take another illustration, authority given to a municipal corporation by general statute to "cause the streets of the city to be lighted," and to make "reasonable regulations" with reference thereto, does not empower the city government to grant to one company the exclusive right to furnish gas for a long period of years.[206] A board of commissioners of a county is a quasi corporation, a local organization which, for purposes of civil administration, is invested with a few of the functions characteristic of a corporate existence. A grant of powers to such a corporation must be strictly construed. When acting under a special power, it must act strictly on the conditions under which it is given.[207]

Grants of Power to Officers

Where statutes confer special ministerial authority, the exercise of which may affect rights of property, or incur a municipal liability, it must be strictly observed, and any

[204] Paine v. Spratley, 5 Kan. 525. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Municipal Corporations," Dec. Dig. (Key No.) §§ 52–62; Cent. Dig. §§ 141–155.*

[205] Mayor, etc., of Wetumpka v. Wetumpka Wharf Co., 63 Ala. 611; City of Aurora v. West, 22 Ind. 88, 85 Am. Dec. 413. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Municipal Corporations," Dec. Dig. (Key No.) §§ 52–62; Cent. Dig. §§ 141–155.*

[206] Saginaw Gaslight Co. v. City of Saginaw (C. C.) 28 Fed. 529. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Municipal Corporations," Dec. Dig. (Key No.) §§ 52–62; Cent. Dig. §§ 141–155.*

[207] State ex rel. Treadwell v. Commissioners of Hancock County, 11 Ohio St. 183, 190. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Municipal Corporations," Dec. Dig. (Key No.) §§ 52–62; Cent. Dig. §§ 141–155.*

material departure will vitiate the proceedings.[208] And the principle that every grant of power carries with it the usual and necessary means for the exercise of that power, and that the power to convey is implied in the power to sell, cannot be admitted in the construction of statutes which are in derogation of common law and the effect of which is to divest a citizen of his real estate, as in the case of sales of land for the nonpayment of taxes. Such statutes, although enacted for the public good, must be strictly construed.[209]

Grants of Charters and Franchises to Corporations

Acts of incorporation, and statutes granting other franchises or special benefits or privileges to corporations, are to be construed strictly against the corporators; and whatever is not given in unequivocal terms is understood to be withheld.[210] As already explained, the common-law rule that words are to be taken in the strongest sense against the party using them is not applicable to a statute of this character. Or if it be supposed that this rule should never-

[208] Board of Com'rs of Shawnee County v. Carter, 2 Kan. 115. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

[209] Sibley v. Smith, 2 Mich. 486; Yancey v. Hopkins, 1 Munf. (Va.) 419. And see Black, Tax Titles, § 155. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319.*

[210] Moran v. Miaml County, 2 Black, 722, 17 L. Ed. 342; Parker v. Great Western Ry. Co., 7 Man. & G. 253; Proprietors of Stourbridge Canal v. Wheeley, 2 Barn. & Ad. 792; Young v. McKenzie, 3 Ga. 31; Coolidge v. Williams, 4 Mass. 140; Detroit v. Detroit & H. P. R. Co., 43 Mich. 140, 5 N. W. 275; State ex rel. City of Minneapolis v. St. Paul, M. & M. Ry. Co., 98 Minn. 380, 108 N. W. 261, 28 L. R. A. (N. S.) 298, 120 Am. St. Rep. 581; In re Leach, 134 Ind. 665, 34 N. E. 641, 21 L. R. A. 701; Board of Com'rs of Vigo County v. Davis, 136 Ind. 503, 36 N. E. 141, 22 L. R. A. 515; Alexandria & F. Ry. Co. v. Alexandria & W. R. Co., 75 Va. 780, 40 Am. Rep. 743; Perrine v. Chesapeake & D. Canal Co., 9 How. 172, 13 L. Ed. 92; Georgia R. & Banking Co. v. Smith, 128 U. S. 174, 9 Sup. Ct. 47, 32 L. Ed. 377. But compare In re Polsson (C. C.) 159 Fed. 283, holding that, in construing a statute granting a right or privilege in the nature of a franchise, that construction must be indulged which is most favorable to the persons or class for whose benefit the grant is made. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Corporations," Dec. Dig. (Key No.) §§ 7–24; Cent. Dig. §§ 16–69.*

theless be applied, the true view is that the organizers or "promoters" of the corporation are to be regarded as framing the instrument of incorporation and so using the words in which it is expressed.[211] The principle which should govern the interpretation in this class of cases was explained in an important and leading case before the United States Supreme Court, as follows: "A great deal of the argument at the bar was devoted to the consideration of the proper rules of construction to be adopted in the interpretation of legislative contracts. In this there is no difficulty. All contracts are to be construed to accomplish the intention of the parties; and in determining their different provisions, a liberal and fair construction will be given to the words, either singly or in connection with the subject-matter. It is not the duty of a court, by legal subtlety, to overthrow a contract, but rather to uphold it and give it effect; and no strained or artificial rule of construction is to be applied to any part of it. If there is no ambiguity, and the meaning of the parties can be clearly ascertained, effect is to be given to the instrument used whether it is a legislative grant or not. In the Case of the Charles River Bridge [11 Pet. 544, 9 L. Ed. 773] the rules of construction known to the English common law were adopted and applied in the interpretation of legislative grants, and the principle was recognized that charters are to be construed most favorably to the state, and that in grants by the public nothing passes by implication. This court has repeatedly since reasserted the same doctrine, and the decisions in the several states are nearly all the same way. The principle is this: That all rights which are asserted against the state must be clearly defined, not raised by inference or presumption, and if the charter is silent about a power, it does not exist. If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the state; and where it is susceptible of two meanings, the

[211] Raleigh & G. R. Co. v. Reid, 64 N. C. 155. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Corporations," Dec. Dig. (Key No.) §§ 7–24; Cent. Dig. §§ 16–69.*

one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the state. But if there is no ambiguity in the charter, and the powers conferred are plainly marked, and their limits can be readily ascertained, then it is the duty of the court to sustain and uphold it, and to carry out the true meaning and intention of the parties to it. Any other rule of construction would defeat all legislative grants and overthrow all other contracts." [212] No strained or extravagant interpretation should be resorted to, to defeat the grant or render it inoperative. For instance, if a statute grants to a turnpike company a power to erect a tollgate "near" a particular spot, they may place it on the spot where an old road intersects, provided only that the gate be near the place designated, for in such a case, "near" is not to be construed as meaning "nearest." [213] So, again, where a statute gives to a corporation power to mortgage its land for the erection of buildings, this will be construed as extending to a mortgage for the cost of painting the same.[214]

Grants of Bounties and Pensions

Where the object of an act of Congress, or of a state legislature, is to confer a bounty or reward, in consideration of meritorious services rendered to the state, or in aid of a deserving charity, or for the compensation of public officers, it should not be subjected to a restrictive interpretation. On the contrary, such a statute ought to be liberally construed, in furtherance of its beneficent purpose and policy, and any doubts or ambiguities arising upon its terms should be resolved in favor of the intended beneficiaries.[215]

[212] The Binghamton Bridge, 3 Wall. 51, 74, 18 L. Ed. 137. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Corporations," Dec. Dig. (Key No.) §§ 7–24; Cent. Dig. §§ 16–69.*

[213] People v. Denslow, 1 Caines (N. Y.) 177. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Corporations," Dec. Dig. (Key No.) §§ 7–24; Cent. Dig. §§ 16–69.*

[214] Miller v. Chance, 3 Edw. Ch. (N. Y.) 399. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Corporations," Dec. Dig. (Key No.) §§ 7–24; Cent. Dig. §§ 16–69.*

[215] Logue v. Fenning, 29 App. D. C. 519. *See "Statutes," Dec. Dig.*

Thus, a statute which grants pensions or half pay to retired, disabled, or superannuated military officers should be interpreted in the manner most beneficial to the officers, even though it may be susceptible of another construction.[216] So also, in a grant of public lands by statute, by way of donation, any language which expresses the legislative intention to invest the party with the title is sufficient.[217] So, where an act of Congress made donations of land to the first settlers upon an exposed part of the frontier, it was considered that, as the statute was intended to confer a bounty upon a numerous class of individuals, but was expressed in somewhat ambiguous terms, it was the duty of the court to adopt the construction which would best effect the liberal intentions of the legislature.[218] So, again, where a statute fixes the compensation of a public officer in loose and obscure terms, admitting of two meanings, it should be given that construction which is most favorable to the officer.[219]

Grants of Monopolies

The legislature of a state, if the public interests may seem to make it desirable, may grant to a person or corporation a monopoly or exclusive franchise or privilege (unless forbidden by the constitution), and the grant may assume the form of a contract, the obligation of which must not thereafter be impaired. But monopolies are not favored

(Key No.) § 238; Cent. Dig. § 319; "Bounties," Dec. Dig. (Key No.) §§ 1–8; Cent. Dig. §§ 1–42; "Pensions," Dec. Dig. (Key No.) § 1; Cent. Dig. § 1.

216 Roane v. Innes, Wythe (Va.) 243; Walton v. Cotton, 19 How. 355, 15 L. Ed. 658. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Bounties," Dec. Dig. (Key No.) §§ 1–8; Cent. Dig. §§ 1–42.*

217 Trustees of Kentucky Seminary v. Payne, 3 T. B. Mon. (Ky.) 161. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Bounties," Dec. Dig. (Key No.) §§ 1–8; Cent. Dig. §§ 1–42.*

218 Ross v. Doe ex dem. Barland, 1 Pet. 655, 7 L. Ed. 302. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Bounties," Dec. Dig. (Key No.) §§ 1–8; Cent. Dig. §§ 1–42.*

219 Butler v. United States, 23 Ct. Cl. 162; United States v. Morse, 3 Story, 87, Fed. Cas. No. 15,820. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Officers," Dec. Dig. (Key No.) § 94; Cent. Dig. § 133.*

in law, and grants of this kind are subject to the following limitations:

(1) The grant is to be construed strictly against the grantee and in favor of the public. Nothing will pass by implication, and the extent of the privileges granted will not be enlarged by inference or construction. Thus, the grant will not be understood to prevent the legislature from according rival or competing franchises to other persons, unless its plain terms convey that meaning.[220]

(2) The intention to grant a monopoly will never be presumed, but on the contrary it will be presumed that the legislature did not intend thus to limit its own power or that of its successors. And this presumption can be overcome only by clear and satisfactory inferences from the terms of the grant. Thus, the privileges granted in an act of incorporation will not be deemed exclusive, unless it appears from the charter, in terms too clear and explicit to be mistaken, that it was the actual and deliberate intention of the legislature to preclude the state from granting similar franchises to any subsequent corporation.[221]

But here it should be mentioned that patents for inventions and copyrights upon literary property are not monopolies, in the sense of being in derogation of the rights

[220] Knoxville Water Co. v. Knoxville, 200 U. S. 22, 26 Sup. Ct. 224, 50 L. Ed. 353; Charles River Bridge v. Warren Bridge, 11 Pet. 420, 9 L. Ed. 773; Washington & B. Turnp. Co. v. Maryland, 3 Wall. 210, 18 L. Ed. 180; The Binghamton Bridge, 3 Wall. 51, 18 L. Ed. 137; North Springs Water Co. v. City of Tacoma, 21 Wash. 517, 58 Pac. 773, 47 L. R. A. 214. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Monopolies," Dec. Dig. (Key No.) §§ 1–6; Cent. Dig. §§ 1–5.*

[221] Black, Const. Law (3d Ed.) 731; Stein v. Bienville Water Supply Co. (C. C.) 34 Fed. 145; Pennsylvania R. Co. v. Canal Com'rs, 21 Pa. 9; Detroit v. Detroit & H. P. R. Co., 43 Mich. 140, 5 N. W. 275; Proprietors of Bridges v. Hoboken Land & Improv. Co., 1 Wall. 116, 17 L. Ed. 571; Parrot v. Lawrence, 2 Dill. 332, Fed. Cas. No. 10,772; Lehigh Water Co.'s Appeal, 102 Pa. 515; Ruggles v. Illinois, 108 U. S. 526, 2 Sup. Ct. 832, 27 L. Ed. 812; State ex rel. Haydon v. Curry, 1 Nev. 251. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Monopolies," Dec. Dig. (Key No.) §§ 1–6; Cent. Dig. §§ 1–5.*

of the community, nor are they granted as restrictions upon those rights, but to promote the progress of science and the useful arts; and hence they are entitled to be liberally construed.[222] "Patents for inventions are not to be treated as mere monopolies, and therefore odious in the eyes of the law, but they are to receive a liberal construction, and under the fair application of the rule 'ut res magis valeat quam pereat' are, if practicable, to be so interpreted as to uphold, and not destroy, the right of the inventor." [223]

Grants of Exemptions—Exemption from Taxation

Statutes which strip a government of any portion of its prerogative, or give exemption from a general burden, should receive a strict interpretation.[224] Hence, statutes exempting a particular class of men (as, officers of the militia) from general burdens borne by all other citizens of the state, such as jury duty or poll taxes, ought to be subjected to a strict construction.[225]

[222] Wilson v. Rousseau, 4 How. 646, 704, 11 L. Ed. 1141; Hogg v. Emerson, 6 How. 437, 12 L. Ed. 505; Brooks v. Fiske, 15 How. 212, 14 L. Ed. 665; Blanchard v. Sprague, 3 Sumn. 535, Fed. Cas. No. 1,518; Davoll v. Brown, 1 Woodb. & M. 53, Fed. Cas. No. 3,662; Hamilton v. Ives, 6 Fish. Pat. Cas. 244, Fed. Cas. No. 5,982; 2 Rob. Pat. § 735. "The law has always regarded monopolies as hostile to the rights and interests of the public. One method of obtaining them in early times was by a grant from the sovereign to a particular individual of the sole right to exercise a particular trade. The mischief arising from these monopolies became so intolerable that the practice was suppressed by a clause in Magna Charta. This clause does not, however, apply to grants for the sole use of a new invention for a limited period. These grants, it is said, are indulged for the encouragement of ingenuity. Patent right and copyright laws rest on this ground." Taylor v. Blanchard, 13 Allen (Mass.) 370, 90 Am. Dec. 203. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Patents," Dec. Dig. (Key No.) §§ 1, 3; Cent. Dig. §§ 1, 3; "Copyrights," Dec. Dig. (Key No.) §§ 1, 2; Cent. Dig. § 1.*

[223] Turrill v. Michigan, S. & N. I. R. Co., 1 Wall. 491, 17 L. Ed. 668. *See "Statutes," Dec. Dig. (Key No.) § 238; Cent. Dig. § 319; "Patents," Dec. Dig. (Key No.) §§ 1, 3; Cent. Dig. §§ 1, 3.*

[224] Academy of Fine Arts v. Philadelphia County, 22 Pa. 496. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319.*

[225] Gorum v. Mills, 34 N. J. Law, 177. A law exempting those persons from the payment of a poll tax who have lost a hand or a foot will not be held to apply to one who has lost part of his

It is well settled that the legislature of a state may agree, by an explicit grant founded upon a consideration, to exempt specified property from taxation, either for a limited period or indefinitely, or that taxation of the property in question shall be had only on a certain basis, and not otherwise, or shall not exceed a certain rate; and this will constitute a contract with the grantee which succeeding legislatures may not impair by imposing taxes contrary to the grant.[226] But the exemption of property from the burden of taxation is against public policy and in derogation of the sovereign rights of the state. Hence the rule of construction is strictly against the person or corporation claiming such exemption and in favor of the public. The right of taxation, like any other power of sovereignty, will not be held to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken and admitting of no reasonable construction consistent with the reservation of the power. And it is never to be presumed that the legislature has in this respect fettered its

fingers or whose foot is crippled and useless. Bigham v. Clubb, 42 Tex. Civ. App. 312, 95 S. W. 675. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

[226] New Jersey v. Wilson, 7 Cranch, 164, 3 L. Ed. 303; Pacific R. Co. v. Maguire, 20 Wall. 36, 22 L. Ed. 282; Northwestern University v. Illinois ex rel. Miller, 99 U. S. 309, 25 L. Ed. 387; New Jersey v. Yard, 95 U. S. 104, 24 L. Ed. 352; Gordon v. Appeal Tax Court, 3 How. 133, 11 L. Ed. 529; Farrington v. Tennessee, 95 U. S. 679, 24 L. Ed. 558; Piqua Branch of State Bank v. Knoop, 16 How. 369, 14 L. Ed. 977; Wilmington & W. R. Co. v. Reid, 13 Wall. 264, 20 L. Ed. 568; New Orleans v. Houston, 119 U. S. 265, 7 Sup. Ct. 198, 30 L. Ed. 411; Yazoo & M. V. R. Co. v. Thomas, 132 U. S. 174, 10 Sup. Ct. 68, 33 L. Ed. 302; Powers v. Detroit, G. H. & M. R. Co., 201 U. S. 543, 26 Sup. Ct. 556, 50 L. Ed. 860; Henderson Bridge Co. v. Henderson, 173 U. S. 592, 19 Sup. Ct. 553, 43 L. Ed. 823; State v. Alabama Bible Soc., 134 Ala. 632, 32 South. 1011; Gulf & S. I. R. Co. v. Adams, 90 Miss. 559, 45 South. 91; State ex rel. Morris v. Board of Trustees of Westminster College, 175 Mo. 52, 74 S. W. 990; Lake Drummond Canal & Water Co. v. Commonwealth, 103 Va. 337, 49 S. E. 506, 68 L. R. A. 92. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

power for the future, except upon clear and irresistible evidence that such, in the particular instance, was the actual and deliberate intention.[227] For example, where a statute granting exemption from taxation to educational institutions employs the term "academies," it means only those designed for purposes of education of a general character; and it is not properly applicable to an institution for the study and exhibition of works of art, although called an "academy of fine arts."[228] And it is well settled that a statutory grant of exemption from taxation will not be extended by judicial construction to embrace property other

[227] Providence Bank v. Billings, 4 Pet. 514, 7 L. Ed. 939; Charles River Bridge v. Warren Bridge, 11 Pet. 420, 9 L. Ed. 773; Gilman v. Sheboygan, 2 Black, 510, 17 L. Ed. 305; Delaware Railroad Tax, 18 Wall. 206, 21 L. Ed. 888; Vicksburg, S. & P. R. Co. v. Dennis, 116 U. S. 665, 6 Sup. Ct. 625, 29 L. Ed. 770; Yazoo & M. V. R. Co. v. Thomas, 132 U. S. 174, 10 Sup. Ct. 68, 33 L. Ed. 302; City of St. Louis v. United Rys. Co., 210 U. S. 266, 28 Sup. Ct. 630, 52 L. Ed. 1054; Mobile & O. R. Co. v. Tennessee, 153 U. S. 486, 14 Sup. Ct. 968, 38 L. Ed. 793; New Orleans City & L. R. Co. v. New Orleans, 143 U. S. 192, 12 Sup. Ct. 406, 36 L. Ed. 121; Dauphin & L. F. Sts. R. Co. v. Kennerly, 74 Ala. 583; Hart v. Plum, 14 Cal. 148; State v. President, etc., of Bank of Smyrna, 2 Houst. (Del.) 99, 73 Am. Dec. 699; Presbyterian Theological Seminary v. People ex rel. Johnson, 101 Ill. 580; German Bank v. Louisville, 108 Ky. 377, 56 S. W. 504; Penrose v. Chaffraix, 106 La. 250, 30 South. 718; William Wilkens Co. v. City of Baltimore, 103 Md. 293, 63 Atl. 562; President, etc., of Portland Bank v. Apthorp, 12 Mass. 252; Attorney General v. Common Council of City of Detroit, 113 Mich. 388, 71 N. W. 632; North Missouri R. Co. v. Maguire, 49 Mo. 490, 8 Am. Rep. 141; Brewster v. Hough, 10 N. H. 138; Little v. Bowers, 48 N. J. Law, 370, 5 Atl. 178; City of Rochester v. Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 70 L. R. A. 773; In re Prime, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; People v. Roper, 35 N. Y. 629; Cincinnati College v. State, 19 Ohio, 110; Jones & Nimick Mfg. Co. v. Commonwealth, 69 Pa. 137; Herrick v. Town of Randolph, 13 Vt. 531; Douglas County Agricultural Soc. v. Douglas County, 104 Wis. 429, 80 N. W. 740. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

[228] Academy of Fine Arts v. Philadelphia County, 22 Pa. 496. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

than that expressly designated.[229] So, also, it is a generally admitted rule that when the property of a railroad or business corporation, or of a church, school, hospital, or other charitable corporation, is by constitution or statute exempted from "all taxation" or from "taxation of every kind," such property is nevertheless liable for its proportionate share of assessments levied for the cost of local improvements.[230] "Yet, while an exemption from taxation cannot be implied from the apparent spirit or general purpose of a statute, this rule does not call for a strained construction, adverse to the real intention of the legislature; and to ascertain that intention the courts will look to the context, as well as to the particular words used, taking into consideration the contemporaneous surroundings and the purposes which the legislature had in view."[231] Moreover, a statute granting exemption from taxation to a corporation, which does not receive such exemption as a bonus, but is required to pay into the state treasury an equivalent

[229] Thurston County v. Sisters of Charity of House of Providence, 14 Wash. 264, 44 Pac. 252. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

[230] Black, Tax Titles, § 81; Lima v. Lima Cemetery Ass'n, 42 Ohio St. 128, 51 Am. Rep. 809; Boston Seamen's Friend Soc. v. Mayor, etc., of City of Boston, 116 Mass. 181, 17 Am. Rep. 153; Roosevelt Hospital v. Mayor, etc., of City of New York, 84 N. Y. 108; First Presbyterian Church of Ft. Wayne v. City of Ft. Wayne, 36 Ind. 338, 10 Am. Rep. 35; In re Mayor, etc., of City of New York, 11 Johns. (N. Y.) 77; Gilmour v. Pelton, 5 Ohio Dec. 447; City of Philadelphia v. Franklin Cemetery, 2 Pa. Super. Ct. 569. But compare Philadelphia v. Church of St. James, 134 Pa. 207, 19 Atl. 497; Yazoo & M. V. R. Co., v. Board of Levee Com'rs (C. C.) 37 Fed. 24. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

[231] Louisville & N. R. Co. v. Gaines (C. C.) 3 Fed. 266; Yale University v. Town of New Haven, 71 Conn. 316, 42 Atl. 87, 43 L. R. A. 490; In re Delinquent Taxes, 81 Minn. 422, 84 N. W. 302; North Jersey St. R. Co. v. Jersey City, 74 N. J. Law, 761, 67 Atl. 33. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

for taxes in the shape of a license, should be construed fairly, and even liberally, in favor of the company.[232]

It should also be remarked that the rule of strict construction in these cases may be, and sometimes is, abrogated by the express language of the statute granting the exemption, as where it prescribes the rules for its own interpretation and directs that the construction shall be liberal in favor of the beneficiary.[233] And strict construction is not applicable to a law providing for the commutation of taxes, as this is not properly a grant of exemption, but a statutory change in the method of taxation.[234]

LAWS AUTHORIZING SUITS AGAINST THE STATE

144. Statutes allowing private persons to maintain suits against the state are in derogation of sovereign rights and must be strictly construed.

No private individual has a right to institute and maintain an action against a state, unless the state has consented thereto. If such consent is given, whether for the particular case only or by a general law, the right of action accorded is a matter of favor, conferred by the state in derogation of that immunity which every sovereign enjoys. For

[232] Milwaukee & St. P. R. Co. v. City of Milwaukee, 34 Wis. 271. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

[233] People ex rel. Kochersperger v. Board of Directors of Chicago Theological Seminary, 174 Ill. 177, 51 N. E. 198; Brown University v. Granger, 19 R. I. 704, 36 Atl. 720, 36 L. R. A. 847. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 204; Cent. Dig. §§ 315, 316, 322, 325, 332–334, 346.*

[234] Binghamton Trust Co. v. City of Binghamton, 72 App. Div. 341, 76 N. Y. Supp. 517; New York & E. R. Co. v. Sabin, 26 Pa. 242. *See "Statutes," Dec. Dig. (Key No.) §§ 237, 238; Cent. Dig. §§ 318, 319; "Taxation," Dec. Dig. (Key No.) §§ 197, 200; Cent. Dig. §§ 315, 316, 319.*

this reason it is to be strictly construed.[235] Hence such suts can be brought only upon such claims and demands as are mentioned in the statute, and only in those courts which the statute specifies for the purpose.[236] Thus, if the act provides that suits against the state may be brought in the circuit court of the district where the plaintiff resides, it cannot be brought in the chancery court.[237] And again, if the law provides that claims must first be presented to the auditor of public accounts for audit, and that the jurisdiction of the courts shall attach only by way of appeal from a decision of such auditor rejecting the claim in whole or in part, these requirements are imperative and must be obeyed, or else the judicial tribunals can have no rightful authority to proceed with the case.[238]

[235] Rose v. Governor, 24 Tex. 496; Raymond v. State, 54 Miss. 562, 28 Am. Rep. 382; State v. Stout, 7 Neb. 89. It appears that only in the state of Arkansas does a contrary doctrine prevail. It is there held that laws authorizing actions against the state should be liberally construed, and hence that the state may be sued as well in chancery as at law. It is said that the right of a citizen to sue a state is not derogatory of common right or subversive of the true principles of the common law, but is in harmony with both. It cannot be supposed that the people, as represented in the constitutional convention, in directing that the legislature should provide in what courts, and in what manner, suits might be commenced against the state, intended that these provisions should be any other than such as would advance this right in the citizen to apply to the courts of justice for the redress of grievances. State v. Curran, 12 Ark. 321. *See "Statutes," Dec. Dig. (Key No.) § 237; Cent. Dig. § 318; "States," Dec. Dig. (Key No.) § 191; Cent. Dig. §§ 179–184.*

[236] Chicago, M. & St. P. Ry. Co. v. State, 53 Wis. 509, 10 N. W. 560; Thomas & Faris v. State, 16 Idaho, 81, 100 Pac. 761. *See "Statutes," Dec. Dig. (Key No.) § 237; Cent. Dig. § 318; "States," Dec. Dig. (Key No.) § 191; Cent. Dig. §§ 179–184.*

[237] Ex parte Greene, 29 Ala. 52. *See "Statutes," Dec. Dig. (Key No.) § 237; Cent. Dig. § 318; "States," Dec. Dig. (Key No.) § 191; Cent. Dig. §§ 179–184.*

[238] State v. Stout, 7 Neb. 89. *See "Statutes," Dec. Dig. (Key No.) § 237; Cent. Dig. § 318; "States," Dec. Dig. (Key No.) § 191; Cent. Dig. §§ 179–184.*

REVENUE AND TAX LAWS

145. Statutes imposing taxes and providing means for the collection of the same should be construed strictly in so far as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be construed with fairness, if not liberality, in order to carry out the intention of the legislature and further the important public interests which such statutes subserve.

In regard to the general rule to be applied in the construction of revenue and tax laws, at least three contrariant opinions have received support from the adjudications of the courts. In England it is well settled (and many authorities in this country have adopted the same view) that any law which imposes a tax or charge upon the subject must be strictly construed; that the intention to impose such a burden cannot be made out by inference or intendment, but must in all cases be shown by clear and unambiguous language; and that all doubts are to be resolved against the government and in favor of the taxpayer.[239] In

[239] Lynch v. Union Trust Co. of San Francisco, 164 Fed. 161, 90 C. C. A. 147; McNally v. Field (C. C.) 119 Fed. 445; Commercial Bank v. Sandford (C. C.) 103 Fed. 98; Powers v. Barney, 5 Blatchf. 202, Fed. Cas. No. 11,361; United States v. Watts, 1 Bond, 580, Fed. Cas. No. 16,653; New England Mortgage Security Co. v. Board of Revenue, 81 Ala. 110, 1 South. 30; Ahern v. Board of Directors of High Line Irr. Dist., 39 Colo. 409, 89 Pac. 963; Moseley v. Tift, 4 Fla. 402; Mayor of City of Savannah v. Hartridge, 8 Ga. 23; City of Alton v. Ætna Ins. Co., 82 Ill. 45; Smith v. Waters, 25 Ind. 397; Barnes v. Doe ex rel. Pelton, 4 Ind. 132; National Loan & Inv. Co. v. Board of Sup'rs of Linn County, 138 Iowa, 11, 115 N. W. 480; City of Maysville v. Maysville St. R. & Transfer Co., 108 S. W. 960, 32 Ky. Law Rep. 1366; Norman v. Boaz, 85 Ky. 557, 4 S. W. 316; Inhabitants of Williamsburg v. Lord, 51 Me. 599; Green v. Holway, 101 Mass. 243, 3 Am. Rep. 339; Sewall v. Jones, 9 Pick. (Mass.) 412; State v. Wheeler, 23 Nev. 143, 44 Pac. 430; Vicksburg & M. R. Co. v. State, 62 Miss. 105; Cahoon v. Coe, 57 N. H. 556; Boyd v. Hood, 57 Pa. 98; Combined Saw & Planer Co. v. Flournoy, 88 Va. 1029, 14

some few of our states, a diametrically opposite doctrine has been maintained. Thus, the court in New Jersey says: "In laying the burden of taxation upon the citizens of the state, while it must be the object of every just system to equalize this charge by a fair apportionment and levy upon the property of all, it is equally the duty of the courts to see that no one, by mere technicalities which do not affect his substantial rights, shall escape his fair proportion of the public expenses, and thus impose them upon others. A liberal construction must therefore be given to all tax laws for public purposes, not only that the offices of government may not be hindered, but also that the rights of all taxpayers may be equally preserved." [240]

Between these two extreme views lies the truth. "There must surely be a just and safe medium," says Judge Cooley,

S. E. 976; Wisconsin Tel. Co. v. City of Oshkosh, 62 Wis. 32, 21 N. W. 828; Oriental Bank Corp. v. Wright, L. R. 5 App. Cas. 842; Warrington v. Furbor, 8 East, 242; Denn v. Diamond, 4 Barn. & C. 243; Gurr v. Scudds, 11 Exch. 190; Wroughton v. Turtle, 11 Mees. & W. 561. To the same effect see People ex rel. New York Mail & Newspaper Transp. Co. v. Gaus, 198 N. Y. 250, 91 N. E. 634, holding that a statute levying a tax should be construed most favorably to the taxpayer, the government being entitled to no rights thereunder except those clearly given by its language. And see People ex rel. Fifth Ave. Bldg. Co. v. Williams, 198 N. Y. 238, 91 N. E. 638, holding that, if there is inconsistency between two sections of a law imposing a tax, the taxpayer must be given the benefit of that section which is most favorable to him. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[240] State v. Taylor, 35 N. J. Law, 184. And see Reynolds v. Bowen, 138 Ind. 434, 36 N. E. 756; Inhabitants of Eliot v. Prime, 98 Me. 48, 56 Atl. 207; Day v. Baker, 36 Mo. 125; Commonwealth v. Nunan, 104 S. W. 731, 31 Ky. Law Rep. 1090; State v. Several Parcels of Land, 83 Neb. 13, 119 N. W. 21; State v. Omaha Country Club, 78 Neb. 178, 110 N. W. 693; Borough of South Chester v. Broomall, 1 Del. Co. R. (Pa.) 58; United States v. Hodson, 10 Wall. 395, 19 L. Ed. 937; Kelly v. Herrall (C. C.) 20 Fed. 364. Statutes enacted to raise revenue by imposition of license taxes are to be liberally construed to effectuate the legislative intent, notwithstanding a penal clause, usual in all such enactments, in respect of licenses, for the purpose of securing prompt and effectual enforcement. District of Columbia v. Fickling, 33 App. D. C. 371. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

"between a view of the revenue laws which treats them as harsh enactments to be circumvented and defeated if possible, and a view under which they acquire an expansive quality in the hands of the court, and may be made to reach out and bring within their grasp, and under the discipline of their severe provisions, subjects and cases which it is only conjectured may have been within their intent. Revenue laws are not to be construed from the standpoint of the taxpayer alone, nor of the government alone. Construction is not to assume either that the taxpayer, who raises the question of his legal liability under the laws, is necessarily seeking to avoid a duty to the state which protects him, nor, on the other hand, that the government, in demanding its dues, is a tyrant which, while too powerful to be resisted, may justifiably be obstructed and defeated by any subtle device or ingenious sophism whatsoever. There is no legal presumption either that the citizen will, if possible, evade his duties, or, on the other hand, that the government will exact unjustly or beyond its needs. All construction, therefore, which assumes either the one or the other, is likely to be mischievous and to take one-sided views, not only of the laws, but of personal and official conduct." [241] To much the same effect is the following language from an opinion of the Supreme Court of Connecticut: "A law imposing a tax is not to be construed strictly because it takes money or property in invitum (although its provisions are for that reason to be strictly executed), for it is taken as a share of a necessary public burden; nor liberally, like laws intended to effect directly some great public object; but fairly for the government and justly for the citizen, and so as to carry out the intention of the legislature, gathered from the language used, read in connection with the general purposes of the law, and the nature of the property on which the tax is imposed and of the legal relation of the taxpayer to it." [242] "There may and doubt-

[241] Cooley, Tax'n, 272. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[242] Hubbard v. Brainard, 35 Conn. 563. See, also, Cornwall v Todd, 38 Conn. 443; Rein v. Lane, L. R. 2 Q. B. 144. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

less should be a distinction taken in the construction of those provisions of revenue laws which point out the subjects to be taxed, and indicate the time, circumstances, and manner of assessment and collection, and those which impose penalties for obstructions and evasions. There is no reason for peculiar strictness in construing the former; neither is there reason for liberality." [243] But there may be some forms of tax laws which should, in all circumstances, receive a strict interpretation. Thus, it is said that a law imposing a privilege tax must be construed favorably to the citizen, and no occupation is to be taxed unless clearly within the provisions of the law.[244]

Statutes which provide that, if the taxes upon land are not duly paid, the land shall thereupon become forfeited to the state, and the title thereto shall vest in the state, are to be strictly construed. "It is certain that the legislature will not be understood as intending to declare a forfeiture of private lands to the state for nonpayment of taxes, if construction can put any less severe meaning on the language of the statute." [245] Again, those provisions of the revenue laws which authorize the officers of the revenue to make public sale of lands on which the taxes remain delinquent are to be construed with strictness, so far as to require an exact compliance with all those provisions which are designed for the security and protection of the taxpayer, though less stress may be laid upon such provisions as are merely directions to the officers. The reason is that laws

[243] Cooley, Tax'n, 271. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[244] Vicksburg & M. R. Co. v. State, 62 Miss. 105; Wilby v. State, 93 Miss. 767, 47 South. 465, 23 L. R. A. (N. S.) 677. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[245] Bennett v. Hunter, 9 Wall. 326, 19 L. Ed. 672; Fairfax v. Hunter, 7 Cranch, 625, 3 L. Ed. 453; Schenck v. Peay, 1 Dill. 267, Fed. Cas. No. 12,451; Dickerson v. Acosta, 15 Fla. 614; In re Baton Rouge Oil Works, 34 La. Ann. 255; Millett v. Mullen, 95 Me. 400, 49 Atl. 871; Tolman v. Hobbs, 68 Me. 316; Mount v. State, 6 Blackf. (Ind.) 25; Nesbitt v. Liggitt, 10 Bush (Ky.) 137; Magruder v. Esmay, 35 Ohio St. 222; Thevenin v. Slocum's Lessee, 16 Ohio, 519; Hale v. Marshall, 14 Grat. (Va.) 489; State v. Swann, 46 W. Va. 128, 33 S. E. 89. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

of this character operate to deprive the citizen of his estate, not, indeed, without due process of law, but by the agency of ministerial officers and in a summary manner, which may result in injustice or even oppression if his rights are not carefully guarded.[246] "When the statute under which land is sold for taxes directs an act to be done, or prescribes the form, time, and manner of doing any act, such act must be done, and in the form, time, and manner prescribed, or the title is invalid, and in this respect the statute must be strictly, if not literally, complied with. But in determining what is required to be done, the statute must receive a reasonable construction, and when no particular form or manner of doing an act is prescribed, any mode which effects the object with reasonable certainty is sufficient. But special stress should always be laid upon those provisions which are designed for the protection of the taxpayer." [247]

On the other hand, but for a similar reason, it is held that statutes allowing the owner of land sold for taxes to redeem the same, on prescribed conditions, are to be construed liberally and generously in favor of the redemptioner, and not to be applied with any greater severity or narrowness than the terms of the law absolutely require.[246] And again,

[246] Smith v. Ryan, 88 Ky. 636, 11 S. W. 647; Young's Lessee v. Martin, 2 Yeates (Pa.) 312; Wills v. Auch, 8 La. Ann. 19; Powell v. Tuttle, 3 N. Y. 396. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[247] Black, Tax Titles, § 155; Chandler v. Spear, 22 Vt. 388. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[246] Dubois v. Hepburn, 10 Pet. 1, 22, 9 L. Ed. 325; Corbett v. Nutt, 10 Wall. 464, 19 L. Ed. 976; Gault's Appeal, 33 Pa. 94; Karr v. Washburn, 56 Wis. 303, 14 N. W. 189; Nelson v. Central Land Co., 35 Minn. 408, 29 N. W. 121; Jones v. Collins, 16 Wis. 594; Alter v. Shepherd, 27 La. Ann. 207; Boyd v. Holt, 62 Ala. 296; Corning Town Co. v. Davis, 44 Iowa, 622; Pike v. Richardson, 136 Mich. 414, 99 N. W. 398; Monaghan v. Auditor General, 136 Mich. 247, 98 N. W. 1021; Bonds v. Greer, 56 Miss. 710; Gabel v. Williams, 39 Misc. Rep. 489, 80 N. Y. Supp. 489; Hale v. Penn's Heirs, 25 Grat. (Va.) 261; Corbett v. Nutt, 18 Grat. (Va.) 624; Poling v. Parsons, 38 W. Va. 80, 18 S. E. 379. A construction of a tax law which makes the amount payable on redemption uncertain should not be adopted, unless that is the clear intention of the statute. Fitzsimmons v. Bona-

statutes intended to cure defects and irregularities in tax proceedings should receive an effective construction at the hands of the courts, and should be so interpreted, if possible, as to carry into operation all the designs which the legislature may reasonably be supposed to have had in mind at the time of the enactment.[249]

United States Internal Revenue and Tariff Acts

In some of the earlier cases involving the interpretation of the internal revenue and customs laws of the United States, the courts adopted and applied the English rule, that statutes levying duties or taxes upon the citizen are to be construed most strongly against the government and in favor of the citizen, and their provisions are not to be extended by implication beyond the clear import of the language used.[250] But afterwards, without going so far in the opposite direction as to hold that these laws should be construed with liberality, the federal tribunals reached the conclusion that there was no adequate reason for subjecting them to a restrictive interpretation, but that they should be

vita (N. J. Ch.) 76 Atl. 313. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[249] Belcher v. Mhoon, 47 Miss. 613; Clementi v. Jackson, 92 N. Y. 591; Clark v. Hall, 19 Mich. 357; McCallister v. Cottrille, 24 W. Va. 173; Paxton v. Valley Land Co., 67 Miss. 96, 6 South. 628; Beers v. People ex rel. Miller, 83 Ill. 488; Mowry v. Blandin, 64 N. H. 3, 4 Atl. 882; Peters v. Heasely, 10 Watts (Pa.) 208; State v. McEldowney, 54 W. Va. 695, 47 S. E. 650. But in Dean v. Charlton, 27 Wis. 522, it is said that acts of the legislature authorizing municipal corporations to reassess and relevy special taxes which were void for irregularities in the proceedings are in derogation of individual rights and likely to work great injustice, and therefore should be strictly construed. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[250] United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,690. Also in a late case in the Circuit Court of Appeals, it is said that revenue statutes, including those fixing duties on imports, are neither remedial laws nor laws founded on any permanent public policy, and should be construed most strongly against the government; for burdens should not be imposed on the taxpayer beyond what such statutes expressly and clearly import. Rice v. United States, 53 Fed. 910, 4 C. C. A. 104. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

construed with fairness and justice and in a manner such as to make them accomplish the purpose designed. In one of the important decisions of the Supreme Court it was said, in substance, that while there was one sense in which every law imposing a penalty or forfeiture might be deemed a penal law, yet in another sense such laws were often deemed, and truly deserved to be called, remedial; that it must not be understood that every law which imposes a penalty is legally speaking a "penal" law, in such sense that it must be construed with great strictness in favor of the citizen. Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in the strict sense, penal acts, although they may inflict a penalty upon those persons who violate them. It was in this light, the court considered, that revenue laws should be viewed. They should be construed in such a manner as most effectually to accomplish the intention of the legislature in enacting them.[251] In another case it was said: "Penalties annexed to violations of general revenue laws do not make such laws penal in the sense which requires them to be construed strictly. Nor, on the other hand, are they to be construed with an excess of liberality. But it is the duty of the court to study the whole statute, its policy, its spirit, its purpose, its language, and, giving to the words used their obvious and natural import, to read the act with these aids in such a way as will best effectuate the intention of the legislature. Legislative intention is the guide to true judicial interpretation." [252] And in a late

[251] Taylor v. United States, 3 How. 197, 210, 11 L. Ed. 559. See, also, Cliquot's Champagne, 3 Wall. 114, 18 L. Ed. 116. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[252] United States v. One Hundred Barrels of Spirits, 2 Abb. (U. S.) 305, Fed. Cas. No. 15,948; United States v. Thirty-Six Barrels of High Wines, 7 Blatchf. 459, Fed. Cas. No. 16,468; Twenty-Eight Cases of Wine, 2 Ben. 63, Fed. Cas. No. 14,281; United States v. Olney, 1 Abb. (U. S.) 275, Fed. Cas. No. 15,918; United States v. Three Tons of Coal, 6 Biss. 379, Fed. Cas. No. 16,515; United States v. Twenty-Five Cases of Cloths, Crabbe, 356, Fed. Cas. No. 16,563; United States v. Willetts, 5 Ben. 220, Fed. Cas. No. 16,699. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

case, which involved the question of the infliction of penalties for illicit distilling and forfeiture of the liquors and apparatus, it was declared to be "the now settled doctrine" of the Supreme Court that "statutes to prevent frauds upon the revenue are considered as enacted for the public good, and to suppress a public wrong, and therefore, although they impose penalties or forfeitures, not to be construed, like penal laws generally, strictly in favor of the defendant; but they are to be fairly and reasonably construed, so as to carry out the intention of the legislature." [253] At the same time, the courts have no rightful authority to tax, by construction, subjects not taxed by the terms of the law, nor to create penalties or forfeitures by an expansive system of interpretation. "It is the duty of the courts of the Union, undoubtedly, so far as they are invested with any agency in carrying out the financial purposes of the government, fairly to enforce the revenue laws of the country, and see that they are not fraudulently evaded. But they are not at liberty, by construction or legal fiction, to enlarge their scope to include subjects of taxation not within the terms of the law." [254] Hence, in cases of serious ambiguity in the language of a tariff act, or in case of a doubtful classification of articles, where the real meaning of Congress cannot be ascertained by a careful and rational study of the act, nor by comparison with provisions of prior statutes relating to the same subject, that construction must be adopted which is more favorable to the importer.[255]

[253] United States v. Stowell, 133 U. S. 1, 10 Sup. Ct. 244, 33 L. Ed. 555, citing Taylor v. United States, 3 How. 197, 210, 11 L. Ed. 559; Cliquot's Champagne, 3 Wall. 114, 145, 18 L. Ed. 116; United States v. Hodson, 10 Wall. 395, 406, 19 L. Ed. 937; Smythe v. Fiske, 23 Wall. 374, 380, 23 L. Ed. 47. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[254] United States v. Watts, 1 Bond, 580, Fed. Cas. No. 16,653. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

[255] Powers v. Barney, 5 Blatchf. 202, Fed. Cas. No. 11,361; McCoy v. Hedden (C. C.) 38 Fed. 89; American Net & Twine Co. v. Worthington, 141 U. S. 468, 12 Sup. Ct. 55, 35 L. Ed. 821. *See "Statutes," Dec. Dig. (Key No.) § 245; Cent. Dig. § 326.*

STATUTES OF LIMITATION

146. Statutes of limitation are statutes of repose and remedial in their nature. Their purposes should not be defeated by undue strictness of construction.

A statute of limitations is a statute of repose, enacted as a matter of public policy to fix a limit of time within which an action must be brought, or the obligation be presumed to have been paid, and it is intended to run against those who are neglectful of their rights, and who fail to use reasonable and proper diligence in the enforcement thereof. Such a statute is therefore remedial in its nature, and should be construed fairly, and even liberally.[256] "Of late years the courts in England and in this country have considered statutes of limitation more favorably than formerly. They rest upon sound policy and tend to the peace and welfare of society. The courts do not now, unless compelled by the force of former decisions, give a strained construction to evade the effect of these statutes. By requiring those who complain of injuries to seek redress by actions at law within a reasonable time, a salutary vigilance is imposed and an end is put to litigation." [257] But if the statute itself is to be construed liberally, necessarily it follows that the exceptions which it makes in favor of particular persons or classes are to be construed with strictness. Accordingly, the doctrine is now very fully established that implied and equitable exceptions are not to be ingrafted upon the statute of limitations where the legislature has not made the exception in express words in the statute; the courts cannot allow them on the ground that they are within the rea-

[256] Burleigh County v. Kidder County (N. D.) 125 N. W. 1063; Rutter v. Carothers, 223 Mo. 631, 122 S. W. 1056; Toll v. Wright, 37 Mich. 93; Coffin v. Cottle, 16 Pick. (Mass.) 383. *See "Limitation of Actions," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 13–15.*

[257] McCluny v. Silliman, 3 Pet. 270, 7 L. Ed. 676. And see Roddam v. Morley, 1 De G. & J. 1; United States v. Wilder, 13 Wall. 254, 20 L. Ed. 681. *See "Limitation of Actions," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 13–15.*

son or equity of the statute.[256] "The general rule in regard to the application of statutes of limitation is that all persons, whether under disability or not, are barred by them, unless excepted from their operation by a saving clause. General words of a statute are to receive a general construction, and unless there is found in the statute itself some ground for restraining it, it cannot be restrained." [259] "Whenever the situation of the party was such as, in the opinion of the legislature, to furnish a motive for excepting him from the operation of the law, the legislature has made the exception. It would be going far for this court to add to those exceptions. * * * If the difficulty be produced by the legislative power, the same power might provide a remedy; but courts cannot on that account insert in the statute of limitations an exception which the statute does not contain." [260] Thus, a statute of limitations, general in its nature, binds minors and married women, although they are not specially named, if they are not specially excepted.[261] And so, where it was urged that the case at bar ought to be excepted out of the statute of limitations, because the complainant had been prevented, for a time, from asserting his claims, by reason of an injunction against him, but the statute made no express exception in favor of persons so circumstanced, the court held that it could make no exception.[262]

[256] Dozier v. Ellis, 28 Miss. 730; Bedell v. Janney, 9 Ill. 193; Sacia v. De Graaf, 1 Cow. (N. Y.) 356; Allen v. Mille, 17 Wend. (N. Y.) 202. *See "Limitation of Actions," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 13–15.*

[259] Favorite v. Booher's Adm'r, 17 Ohio St. 548. *See "Limitation of Actions," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 13–15.*

[260] McIver v. Ragan, 2 Wheat. 25, 4 L. Ed. 175. *See "Limitation of Actions," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 13–15.*

[261] Warfield v. Fox, 53 Pa. 382. *See "Limitation of Actions," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 13–15.*

[262] Kilpatrick v. Byrne, 25 Miss. 571. A statute providing that where an action, commenced within the time limited by law, is defeated "for any matter of form," the plaintiff may commence a new action for the same cause of action within one year, is a beneficial statute and is to be construed very liberally. Johnston v. Sikes, 56 Conn. 589. *See "Limitation of Actions," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 13–15.*

CHAPTER XIII

MANDATORY AND DIRECTORY STATUTES AND PROVISIONS

147–149. Definitions.
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152. Means of Determining Character of Provision.
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160. Laws Authorizing Taxation.
161. Audit and Payment of Public Debts.
162. Grant of Licenses.
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DEFINITIONS

147. A statute or statutory provision is said to be mandatory when it commands and requires that certain action shall be taken by those to whom the statute is addressed, without leaving them any choice or discretion in the matter, or when, in respect to action taken under the statute, there must be exact and literal compliance with its terms, or else the act done will be absolutely void.

148. A statute which authorizes or permits certain action to be taken by those to whom it is addressed or whom it concerns, at their option or in their discretion, but does not imperatively require it, is said to be enabling or permissive.

149. A statutory provision which directs the manner in which certain action shall be taken or certain official duties performed is said to be directory when its nature and terms are such that disregard of it, or want of literal compliance with it, though constituting an irregularity, will not absolutely vitiate the proceedings taken under it.

The terms "mandatory" and "directory" are naturally not applicable to prohibitive statutes or those which simply forbid or denounce the doing of certain acts. They are used with reference to affirmative statutes, or those which contemplate that action shall or may be taken under them. And, first, the question may arise as to whether the contemplated action must be taken or may be omitted. If the intention of the legislature is that the person, officer, board, court, or municipality to which the statute is addressed must at all events, and whenever the prescribed conditions occur, take the action which it enjoins, without option or discretion as to doing or not doing the thing in question, the statute is called "mandatory." But if the legislature means that the act which it authorizes may or may not be performed, according as the person concerned shall choose to take the benefit of the statute or to forego it, or according as the exercise of judgment and discretion shall show it to be proper and expedient or the reverse, it is sometimes called a "directory" statute, but more properly "permissive" or "enabling."[1] Second, the question may arise as to the form, time, or manner of doing the thing enjoined by the statute. In this case, the act is described as "mandatory" when its terms must be precisely and literally complied with in order to impart validity to proceedings taken under it, but "directory" if a substantial compliance with its directions will be enough to validate the proceedings, or if the doing of the thing enjoined in some other mode or form or at some other time will satisfy the requirements of justice and not impair any public or private rights.[2] Generally

[1] Statutes may be directory or imperative. The former prescribe privileges, and the latter impose duties. The former leave room for the exercise of a choice or discretion, while the latter are absolute and peremptory. Payne v. Fresco, 4 Kulp (Pa.) 25. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[2] See Webster v. French, 12 Ill. 302; Woodward v. Sarsons, L. R. 10 C. P. 733. Those requirements of a statute which are mandatory must be strictly construed, while those requirements which are directory should receive a liberal construction to accomplish the purpose of the act. People ex rel. Johnson v. Earl, 42 Colo. 238, 94

speaking, if no substantial rights depend on the exact observance of the provisions of the statute, and no injury can result from ignoring them, and if the purpose of the legislature can be accomplished in some other manner than that prescribed and substantially the same results obtained, then the statute will be regarded as directory.[3] And so where the statute relates to matters of convenience rather than of substance, or its provisions are only for the purpose of securing orderly procedure in the conduct of public business.[4]

These general considerations may serve to explain the difference between directory and mandatory provisions, so far as concerns their effect on the rights of private persons and on the conduct of public business. But with the officer, whose official action is regulated by the statute, the case is somewhat different. To say that the statute is directory does not mean that he is at liberty to disobey it at his mere pleasure or caprice. To him it is a command. His omission to discharge a duty prescribed by a directory statute may not vitiate the proceedings as to third persons, but it will certainly render him liable to any person injured by his failure to act.[5]

It does not necessarily follow that because a statute is directory in some of its parts or provisions, or in some of its aspects, or as to some of the persons who are to act under it, it must be held directory throughout its whole extent. It is most frequently the case that some particular clause or provision of the act is construed as directory only, while the remainder is held to be imperative. The two classes of

Pac. 294. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[3] Granite Bituminous Pav. Co. v. McManus, 144 Mo. App. 593, 129 S. W. 448. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[4] Reid v. Southern Development Co., 52 Fla. 595, 42 South. 206; Ferris Press Brick Co. v. Hawkins (Tex. Civ. App.) 116 S. W. 80. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[5] Brown v. Lester, 13 Smedes & M. (Miss.) 392; Evers v. Hudson, 36 Mont. 135, 92 Pac. 462. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

provisions may even coexist in the same section or other division of the enactment. For example, where an act directs a certain officer to take certain action and within a certain time, it may be directory as to the time of performance, but mandatory as to the doing of the act itself.[6]

It may be that the statute itself will point out which of its provisions are to be considered as mandatory and which as directory. But this is not usually the case. In the absence of such authoritative guidance, the courts must determine the question for themselves; and the fact that a statute is peremptory in form is by no means decisive as to the construction to be adopted.[7] The proper object of the courts in construing any statutory provision as merely directory is not to defeat the legislative will, but to avoid the delay, confusion, and overturning of rights and titles which would result from ascribing an invalidating effect to every trifling irregularity in official action. But it must be admitted that this power to declare statutes directory, instead of imperative, is sometimes employed by the courts as a means of modifying the rigor of the law or escaping the harsh and severe consequences which would follow its strict enforcement, and sometimes as a convenient method of avoiding the necessity of putting into active operation laws which are obsolete and ill-adapted to contemporary conditions, but still unrepealed. This is well illustrated by a decision in Pennsylvania, where the question arose upon a very ancient statute of that state which provided that "all marriages shall be solemnized by taking each other for husband and wife before twelve sufficient witnesses." The court said: "To escape from a conclusion imputative of guilt to the parties, and destructive of the civil rights of their offspring, it is necessary to hold, not only this clause, but those which require a certificate of the marriage under the hands of the parties and the twelve witnesses to be reg-

[6] See Hardcastle, Stat. Constr. (2d Ed.) 281.

[7] Rutter v. White, 204 Mass. 59, 90 N. E. 401. *See "Statutes" Dec. Dig. (Key No.) § 222; Cent. Dig. §§ 308, 309.*

istered in the proper office, as well as publication of banns by posting on the church or courthouse doors, with other matters fallen into disuse, to be but directory." [8]

PERMISSIVE AND MANDATORY TERMS

150. Such terms and phrases as are susceptible of being read in either a mandatory or a directory sense are presumed to have been used in their natural and primary signification, and should not be interpreted otherwise, unless it is necessary to carry out the purpose of the legislature, effect justice, secure public or private rights, or avoid absurdity.

151. But words in a statute importing permission or authorization may be read as mandatory, and words importing a command may be read as permissive or enabling, whenever, in either case, such a construction is rendered necessary by the evident intention of the legislature or the rights of the public or of private persons under the statute.

The words "may," "authorized," "shall," "must," and the like, as employed in statutes, are first of all to be presumed to have been used in their natural and ordinary sense, and they will be so understood unless such a construction would be obviously repugnant to the intention of the legislature, or would lead to some inconvenience or absurdity.[9] It has sometimes been loosely said that "may" and "shall," as

[8] Rodebaugh v. Sanks, 2 Watts (Pa.) 9. *See "Marriage," Dec. Dig. (Key No.) § 14; Cent. Dig. § 5.*

[9] Medbury v. Swan, 46 N. Y. 200; People ex rel. Comstock v. City of Syracuse, 59 Hun, 258, 12 N. Y. Supp. 890; Morse v. Press Pub. Co., 71 App. Div. 351, 75 N. Y. Supp. 976; Downing v. City of Oskaloosa, 86 Iowa, 352, 53 N. W. 256; Blair v. Murphree, 81 Ala. 454, 2 South. 18; Kelly v. Morse, 3 Neb. 224; Lewis v. State, 3 Head (Tenn.) 127; Kemble v. McPhaill, 128 Cal. 444, 60 Pac. 1092; Talmage v. Third Nat. Bank, 91 N. Y. 531; Town of Hempstead v. Lawrence, 138 App. Div. 473, 122 N. Y. Supp. 1037. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

used in statutes, are interchangeable terms. But this is not correct. To convert such terms, the one into the other, at the mere will of the court, would be little short of substantive legislation. It is true that this may be done where it is imperatively necessary to prevent an irreparable mischief or an invasion of vested rights, and where the public interests or the fixed rights of individuals are concerned.[10] But otherwise it is not permissible to put a forced or strained construction upon words of this character, to elevate merely permissive words into the force of a command, or to soften imperative expressions into a mere grant of license or authority.[11]

Taken in its natural and ordinary sense, the word "may" does not import a command, but merely signifies permission, ability, or possibility, and generally it denotes that the action spoken of is optional with the person concerned, or rests in the discretion of the court or body to which license or permission is given.[12] And the word always retains this primary meaning unless a different construction is necessary to give effect to the clear purpose and intention of the legislature, to make the statute accord with settled public policy, or to save the rights of parties in interest.[13] For

[10] City Sewage Utilization Co. v. Davis, 8 Phila. (Pa.) 625; Rock Island County v. United States ex rel. State Bank, 4 Wall. 435, 18 L. Ed. 419; Village of Kent v. United States, 113 Fed. 232, 51 C. C. A. 189; Kohn v. Hinshaw, 17 Or. 308, 20 Pac. 629; Winsor Coal Co. v. Chicago & A. R. Co. (C. C.) 52 Fed. 716; Chicago & A. R. Co. v. Howard, 38 Ill. 414. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[11] Santa Cruz Rock Pavement Co. v. Heaton, 105 Cal. 162, 38 Pac. 693; Ball v. Flagg, 67 Mo. 481; Koch v. Bridges, 45 Miss. 247. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[12] Santa Cruz Rock Pavement Co. v. Heaton, 105 Cal. 162, 38 Pac. 693. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[13] Chicago, W. & V. Coal Co. v. People, 114 Ill. App. 75; Board of Com'rs of Vigo County v. Davis, 136 Ind. 503, 36 N. E. 141, 22 L. R. A. 515; Harrison v. Wissler, 98 Va. 597, 36 S. E. 982; State v. School District No. 1, Edwards County, 80 Kan. 667, 103 Pac. 136; Town of Hempstead v. Lawrence, 138 App. Div. 473, 122 N. Y. Supp. 1037. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

example, in a statute providing that whoever is found in a state of intoxication in a public place may be arrested without a warrant by a police officer, the language is permissive. It gives authority to the officers named to use their discretion in regard to making the arrest, considering all the circumstances of the particular case, but does not require them at all hazards to arrest such a person.[14] But the word "may" should be taken as equivalent to "must" in all cases where it is evident that the legislature means to impose a positive and absolute duty, and not merely to give a discretionary power.[15] And it is well settled that "may," in any statute, is to be construed as equivalent to "shall" or "must" when the public interests or rights are concerned, and when the public or third persons have a right de jure to claim that the power granted should be exercised.[16]

On the other hand, "shall" and "must" are words of command. Taken in their usual and proper meaning, they leave no room for choice or discretion, but are imperative;[17] and they will be presumed to have been used in this sense, unless something in the character of the statute or the subject to which it relates, or in the context, shows that this could not have been the intention of the legislature.[18]

[14] Commonwealth v. Cheney, 141 Mass. 102, 6 N. E. 724, 55 Am. Rep. 448. *See "Assault and Battery," Cent. Dig. § 91.*

[15] Minor v. Mechanics' Bank, 1 Pet. 46, 64, 7 L. Ed. 47; Mayor, etc., of City of New York v. Furze, 3 Hill (N. Y.) 612. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[16] Alderman Backwell's Case, 1 Vern. 152; Blake v. Portsmouth & C. R. Co., 39 N. H. 435; Nave v. Nave, 7 Ind. 122; Bansemer v. Mace, 18 Ind. 27, 81 Am. Dec. 344; Ex parte Banks, 28 Ala. 28; Schuyler County v. Mercer County, 9 Ill. 20; Rock Island County v. United States ex rel. State Bank, 4 Wall. 435, 18 L. Ed. 419; Tarver v. Commissioners' Court of Tallapoosa County, 17 Ala. 527; Newburgh & C. Turnpike Road v. Miller, 5 Johns. Ch. (N. Y.) 101, 9 Am. Dec. 274; Minor v. Mechanics' Bank of Alexandria, 1 Pet. 46, 7 L. Ed. 47; Cutler v. Howard, 9 Wis. 309. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[17] In re City of Rochester (Sup.) 10 N. Y. Supp. 436; People v. Thomas, 32 Misc. Rep. 170, 66 N. Y. Supp. 191; Eaton v. Alger, 57 Barb. (N. Y.) 179. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[18] Board of Finance of School City of Aurora v. People's Nat.

The word "ought," though generally directory only, will be taken as mandatory if the context requires it,[19] as, for example, in a constitutional provision that all property subject to taxation "ought" to be taxed in proportion to its value.[20]

The phrase "it shall be lawful" is generally considered as equivalent to the word "may"; that is, primarily it does not amount to a command or positive direction, but grants permission or license. It authorizes, but does not require. It leaves action or nonaction to the choice or discretion of the person concerned.[21] But where the phrase is used with reference to a public officer or a municipal corporation, and grants an authority to be executed for the benefit of a third person, who has a right to claim its exercise, the words will be construed as imperative and as imposing a positive and absolute duty.[22] Thus an act of Congress provided that "it shall be lawful" for the Commissioner of Patents to issue a new patent in place of one which proved to be invalid or inoperative and which was surrendered to him; and it was held that this made it the imperative duty of the Commissioner to issue the new patent in a proper case.[23] So, where a statute provides that, in changing the grade of streets, it

Bank of Lawrenceburg, 44 Ind. App. 578, 89 N. E. 904; Haythorn v. Van Keuren (N. J.) 74 Atl. 502. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[19] Life Ass'n of America v. St. Louis County Board of Assessors, 49 Mo. 518; Jackson v. State, 32 Tex. Cr. R. 192, 22 S. W. 831. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[20] Life Ass'n of America v. St. Louis County Board of Assessors, 49 Mo. 518. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[21] Verplanck v. Mercantile Ins. Co., 1 Edw. Ch. (N. Y.) 83; Ex parte Whittington, 34 Ark. 394; Great Western Ry. Co. v. Regina, 1 El. & Bl. 874; Williamson v. Williamson, 1 Johns. Ch. (N. Y.) 488. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[22] Mason v. Fearson, 9 How. 248, 13 L. Ed. 125; Mayor of City of New York v. Furze, 3 Hill (N. Y.) 612; Hutson v. City of New York, 9 N. Y. 163, 59 Am. Dec. 526; Davison v. Davison's Adm'rs, 17 N. J. Law, 169; Julius v. Bishop of Oxford, L. R. 5 App. Cas. 214. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[23] Ex parte Dyson, 8 Fed. Cas. 215. *See "Patents," Dec. Dig. (Key No.) § 134; Cent. Dig. § 197.*

shall be lawful for the municipal authorities to make proper awards for damages, this does not leave the matter to their discretion, but the duty to make such awards is imperative.[24] It is also ruled that where a statute makes it "lawful" for a court to take certain action or pursue a certain course of procedure, this term will be construed as mandatory where the thing to be done is permitted only in the mode pointed out by the statute, but as directory where the same thing might have been accomplished in another way before the passage of the act or under distinct provisions of the same law.[25] But the English doctrine is that in all cases where these words, "it shall be lawful," are used in a statute with reference to a court of justice, and are not otherwise controlled, they confer a jurisdiction, leaving it to the court to exercise its discretion according to the requirements of justice in each particular case.[26]

Authority of the Courts and Its Proper Limitations

Although the power of the courts to construe mandatory words as directory, and vice versa, can be vindicated, not only upon authority, but also by the necessities of the case, yet it is a power dangerously liable to abuse, and one which should be most carefully guarded in its exercise. "This mode of getting rid of a statutory provision by calling it directory is not only unsatisfactory on account of the vagueness of the rule itself, but it is the exercise of a dispensing power by the courts which approaches so near to legislative discretion that it ought to be resorted to with reluctance, only in extraordinary cases, where great public mischief would otherwise ensue, or important private interests demand the application of the rule. There is no more propriety in dispensing with one positive requirement than another; a whole statute may be thus dispensed with when in the way of the caprice or will of a judge. And be-

[24] Clark v. City of Elizabeth, 61 N. J. Law, 565, 40 Atl. 616. *See "Municipal Corporations," Dec. Dig. (Key No.) § 385.*

[25] Caulker v. Banks, 3 Mart. N. S. (La.) 532. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[26] In re Bridgman, 1 Drew. & Sm. 164. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

sides, it vests a discretionary power in the ministerial officers of the law which is dangerous to private rights, and the public inconvenience occasioned by a want of uniformity in the mode of exercising a power is a strong reason for bridling this discretion. It is dangerous to attempt to be wiser than the law; and when its requirements are plain and positive, the courts are not called upon to give reasons why it was enacted. A judge should rarely take upon himself to say that what the legislature have required is unnecessary. He may not see the necessity of it; still it is not safe to assume that the legislature did not have a reason for it; perhaps it only aimed at certainty and uniformity. In that case, the judge cannot interfere to defeat that object, however puerile it may appear. It is admitted that there are cases where the requirements may be deemed directory. But it may safely be affirmed that it can never be where the act, or the omission of it, can by any possibility work advantage or injury, however slight, to any one affected by it. In such case, the requirement of the statute can never be dispensed with." [27]

MEANS OF DETERMINING CHARACTER OF PROVISION

152. There is no absolute formal test for determining whether a statutory provision is to be considered mandatory or directory. The meaning and intention of the legislature must govern; and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it in the one way or the other.

Many different tests have been proposed for determining whether a statutory provision is to be regarded as mandatory or merely directory. But none of them is entirely satisfactory as a fixed rule, or adequate to the solution of all

[27] Koch v. Bridges, 45 Miss. 247. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

possible cases. The object here, as in all other cases of construction, is to ascertain the meaning and intention of the legislature, and when that is clearly discoverable, it will control the literal import of the words used, and justify the interpretation of mandatory words in a merely permissive sense or vice versa.[28] In seeking the legislative intent, recourse must, of course, first be had to the language of the statute; but this is not always conclusive. The mere fact that a statute is mandatory in form does not necessarily make it so in its effect.[29] But the court should not stop with a consideration of the primary meaning of such words as "may," "shall," or "must." For the particular intention of the legislature in using words of this kind may often be determined from the context. Thus, where a merely permissive term is coupled with words importing a choice or option, it is clearly to be taken in its natural and primary sense, as where it is enacted that a court or officer "may in his discretion" take certain action.[30] But where a word of authorization is coupled with a mandatory term, the former takes color from the latter. Thus, the expression "may and shall" means "must." The imperative word is not softened by its conjunction with the permissive word, but vice versa. In such a phrase, "may" grants authority, and "shall" requires its exercise.[31] If these two words are contrasted with each other by their employment in different

[28] Fields v. United States, 27 App. D. C. 433; Leigton v. Maury, 76 Va. 865; State v. Barry, 14 N. D. 316, 103 N. W. 637; Boyer v. Onion, 108 Ill. App. 612; Rothschild v. New York Life Ins. Co., 97 Ill. App. 547. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[29] Eccles Lumber Co. v. Martin, 31 Utah, 241, 87 Pac. 713; Rutter v. White, 204 Mass. 59, 90 N. E. 401. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[30] Darby v. Condit, 1 Duer (N. Y.) 599; In re Carter, 3 Or. 293; State v. Knowles, 90 Md. 646, 45 Atl. 877, 49 L. R. A. 695; King Real Estate Ass'n v. City of Portland, 23 Or. 199, 31 Pac. 482. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[31] Quinn v. Wallace, 6 Whart. (Pa.) 452; Central New Jersey Land & Imp. Co. v. City of Bayonne, 56 N. J. Law, 297, 28 Atl. 713; Attorney General v. Lock, 3 Atk. 164. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

clauses or sentences of the same section or paragraph, it shows the legislative intention that each should be taken in its primary and natural sense. This rule is applicable, for example, to a statute relating to compulsory attendance at the public schools and providing that the proper authorities "shall" appoint attendance officers, and "may" make rules and regulations;[32] to a law providing that, in actions to enforce a mechanic's lien, certain persons "shall" be made parties, and others "may";[33] and to one providing that the revenues of a city for each year shall be devoted to the expenses of that year, and that any surplus "may" be applied to the payment of indebtedness of former years.[34] Where a statute authorizing certain action to be taken by public officers expressly leaves it to their judgment and discretion, but is afterwards amended so as to read simply that they "may" take such action, it will be understood as imposing a duty upon them, especially if the public interests are in any way involved.[35]

Again, it is often said that the use of negative terms will make a statute imperative. Thus, if the law directs that a particular proceeding shall be taken at a particular time or in a particular manner "and not otherwise," or if it makes the act void if not done as directed, or if it gives it effect only on condition that it be so done, or if it declares that if the proceeding is not taken subsequent proceedings shall not be had, or if it prohibits the doing of the act except at the time or in the manner prescribed, in these and similar cases, the wording of the statute is generally to be taken as indicating the intention of the legislature to exact a

[32] Reynolds v. Board of Education of Union Free School Dist. of City of Little Falls, 33 App. Div. 88, 53 N. Y. Supp. 75. *See "Schools and School Districts," Dec. Dig. (Key No.) § 161.*

[33] Schaeffer v. Lohman, 34 Mo. 68. *See "Mechanics' Liens," Cent. Dig. § 471.*

[34] United States ex rel. Siegel v. Thoman, 156 U. S. 353, 15 Sup. Ct. 378, 37 L. Ed. 450. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[35] State ex rel. Stoutmeyer v. Duffy, 7 Nev. 342, 8 Am. Rep. 713. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

strict compliance with its terms.[36] But this rule is not invariable. There are cases which have been ruled in direct opposition to its purport. And still less reliance can be placed upon the converse of this rule, namely, that the absence of negative words shows that the provision was designed to be only directory.[37] Where the words of a statute are affirmative, and relate to the manner in which power or jurisdiction vested in a public officer or body is to be exercised, and not to the limits of the power or jurisdiction itself, they may be, and often are, construed to be directory.[38] But affirmative words may make the statute imperative, if they are absolute, explicit, and peremptory, and show that no discretion is intended to be given.[39]

Another line of cases suggests, as the proper test of the imperative or directory character of a statute, the question whether the thing directed to be done is of the essence of the thing required or relates to matters of form.[40] "When a particular provision of a statute relates to some immaterial matter, where compliance is a matter of convenience

[36] Hurford v. City of Omaha, 4 Neb. 336; Connecticut Mut. Life Ins. Co. v. Wood, 115 Mich. 444, 74 N. W. 656; Appeal of Spencer, 78 Conn. 301, 61 Atl. 1010. So a statute directing judges of elections to write the voter's poll list number on the ballot, and forbidding the counting of an unnumbered ballot, is mandatory. State v. Conner, 86 Tex. 133, 23 S. W. 1103. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[37] Cooley, Const. Lim. 74. See Gomez v. Timon (Tex. Civ. App.) 128 S. W. 656. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[38] Bladen v. City of Philadelphia, 60 Pa. 464. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[39] Potter's Dwarris on Stat. 228. If an affirmative statute, introductive of a new law, directs a thing to be done in a certain manner, that thing cannot, even although there are no negative words, be done in any other manner. Cook v. Kelley, 12 Abb. Prac. (N. Y.) 35. And see Com'rs of the Poor of Laurens District v. Gains, 3 Brev. (S. C.) 396. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[40] In re Norwegian Street, 81 Pa. 349; Hope v. Flentge, 140 Mo. 390, 41 S. W. 1002, 47 L. R. A. 806; Custer County v. Yellowstone County, 6 Mont. 39, 9 Pac. 586. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

rather than substance, or where the directions of a statute are given with a view to the proper, orderly, and prompt conduct of public business merely, the provision may generally be regarded as directory." [41] But "when a fair interpretation of the statute, which directs acts or proceedings to be done in a certain way, shows that the legislature intended a compliance with such provisions to be essential to the validity of the act or proceeding, or when some antecedent and prerequisite conditions must exist prior to the exercise of the power, or must be performed before certain other powers can be exercised, then the statute must be regarded as mandatory." [42]

Various other recognized rules of construction may also be brought to bear upon the problem, such as that which requires an interpretation which will make the statute sensible, intelligent, and effective throughout its entire extent,[43] and that which directs the court, if possible, to give such a construction to a statute as will give reasonable and effective operation to each of its various clauses and provisions.[44] Again, the words "may," "shall," and the like, may be interpreted contrary to their natural and primary meaning, when such a construction is necessary to prevent injustice, great public inconvenience, or absurd results.[45] Thus, in a statute providing that civil actions can only be commenced within the periods prescribed in the act, but that where, in special cases, a different limitation is prescribed by statute, the action may be commenced accordingly, the word "may" is to be construed as "must," since

[41] Hurford v. City of Omaha, 4 Neb. 336; Custer County v. Yellowstone County, 6 Mont. 39, 9 Pac. 586; Appeal of Spencer, 78 Conn. 301, 61 Atl. 1010. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[42] Hurford v. City of Omaha, 4 Neb. 336. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[43] Carbaugh v. Sanders, 13 Pa. Super. Ct. 361. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[44] Offield v. Davis, 100 Va. 250, 40 S. E. 910. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[45] North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, 673, 32 C. C. A. 84. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

it could not have been the intention of the legislature that a party might have an election either to be governed by the general statute of limitations or by that laid down in relation to special cases; such a construction, said the court, would lead to "absurd consequences." [46]

Still a different aspect of the question is developed by the United States Supreme Court in a case where it was said: "There are undoubtedly many statutory requisitions intended for the guidance of officers in the conduct of business devolved upon them, which do not limit their power or render its exercise in disregard of the requisitions ineffectual. Such generally are regulations designed to secure order, system, and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected. Provisions of this character are not usually regarded as mandatory, unless accompanied by negative words, importing that the acts required shall not be done in any other manner or time than that designated. But when the requisitions prescribed are intended for the protection of the citizen and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory. They must be followed, or the act done will be invalid. The power of the officer in all such cases is limited by the manner and conditions prescribed for its exercise." [47] Again, it has been said that if it is clear that the legislature did not intend to impose any penalty for a noncompliance with the directions of the statute, it is but carrying out the legislative will to declare the statute in that respect to be simply directory.[48] But in regard to all these rules and criteria, it must be remarked that while each of them contains some valuable and helpful truth, no one of them should be set up as a fixed and invariable standard.

[46] Columbus, S. & C. R. Co. v. Mowatt, 35 Ohio St. 284. *See "Limitation of Actions," Dec. Dig. (Key No.) § 5; Cent. Dig. §§ 13–15.*

[47] French v. Edwards, 13 Wall. 506, 511, 20 L. Ed. 702. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[48] Corbett v. Bradley, 7 Nev. 106. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

Much will depend upon the circumstances of the individual case. Each of these rules may furnish a clue or indication of the meaning of the legislature, but none of them can take the place of that meaning when it is discoverable. If the language of the enactment does not certainly disclose it, the legislative design is to be determined mainly from a consideration of the antecedent probability or improbability of a particular construction having been intended.

TERMS OF AUTHORIZATION CONSTRUED AS MANDATORY

153. Where a statute provides for the doing of some act which is required by justice or public duty, or where it invests a public body, municipality, or officer with power and authority to take some action which concerns the public interests or the rights of individuals, though the language of the statute be merely permissive in form, yet it will be construed as mandatory, and the execution of the power may be insisted upon as a duty.[49]

[49] Rex v. Barlow, 2 Salk. 609; King v. Inhabitants of Derby, Skin. 370; Rock Island County v. United States ex rel. State Bank, 4 Wall. 435, 18 L. Ed. 419; City of Galena v. Amy, 5 Wall. 705, 18 L. Ed. 560; Ralston v. Crittenden (C. C.) 13 Fed. 508; People v. Supervisors of Otsego County, 51 N. Y. 401; Phelps v. Hawley, 52 N. Y. 23; Mayor of City of New York v. Furze, 3 Hill (N. Y.) 612; People v. Supervisors of New York, 11 Abb. Prac. (N. Y.) 114; Inhabitants of Veazie v. Inhabitants of China, 50 Me. 518; Inhabitants of Milford v. Inhabitants of Orono, 50 Me. 529; Wendel v. Durbin, 26 Wis. 390; Kellogg v. Page, 44 Vt. 356, 8 Am. Rep. 383; Jones v. State ex rel. Board of Public Instruction, 17 Fla. 411; People ex rel. Brokaw v. Commissioners of Highways, 130 Ill. 482, 22 N. E. 596, 6 L. R. A. 161; State ex rel. Jones v. Laughlin, 73 Mo. 443; Columbus, S. & C. R. Co. v. Mowatt, 35 Ohio St. 284; Hayes v. Los Angeles County, 99 Cal. 74, 33 Pac. 766; Havemeyer v. Superior Court of San Francisco, 84 Cal. 327, 24 Pac. 121, 10 L. R. A. 627, 18 Am. St. Rep. 192; McLeod v. Scott, 21 Or. 94, 26 Pac. 1061; Bansemer v. Mace, 18 Ind. 27, 81 Am. Dec. 344; Provisional Municipality of Pensacola v. Lehman, 57 Fed. 324, 6 C. C. A. 349; Blair v. Murphree, 81 Ala. 454, 2

The foregoing rule is applicable to all sorts of public officers, boards, and commissions, and generally also to the courts of justice. The extent and variety of the cases in which it has been invoked may be judged from the decisions cited. Among its most important applications are those which concern the chartered or special statutory powers and duties of municipalities. It is a well-settled principle that when a statute confers a power on a municipal corporation which is to be exercised for the public good, the exercise of the power is not merely discretionary, but must be understood as commanded and required; and in such case the words "power and authority" will be construed as meaning "duty and obligation." [50] Thus a provision in the charter of a city that the mayor and council "shall have full power and authority" to enact ordinances necessary to preserve the health of the city means that it shall be the duty and obligation of the city to enact such laws, and confers a power to be exercised for the public good; and the exercise of it is not merely discretionary,

South. 18; In re McCort, 52 Kan. 18, 34 Pac. 456; Furbish v. Kennebec County Com'rs, 93 Me. 117, 44 Atl. 364; Blake v. Portsmouth & C. R. Co., 39 N. H. 435; Bean v. Simmons, 9 Grat. (Va.) 389; Stoeckle v. Lewis (Del.) 38 Atl. 1059; Johnston v. Pate, 95 N. C. 68; Kemble v. McPhaill, 128 Cal. 444, 60 Pac. 1092; Winsor Coal Co. v. Chicago & A. R. Co. (C. C.) 52 Fed. 716; Traders' Mut. Life Ins. Co. v. Humphrey, 109 Ill. App. 246; Gray v. State ex rel. Coghlen, 72 Ind. 567; State ex rel. Vernon County v. King, 136 Mo. 309, 36 S. W. 681; State v. Barry, 14 N. D. 316, 103 N. W. 637; Jordan v. Davis, 10 Okl. 329, 61 Pac. 1063; Whitley v. State, 134 Ga. 758, 68 S. E. 716; Queeny v. Higgins, 136 Iowa, 573, 114 N. W. 51; Binder v. Langhorst, 234 Ill. 583, 85 N. E. 400; State ex rel. Nicomen Boom Co. v. North Shore Boom & Driving Co., 55 Wash. 1, 103 Pac. 426; McConnell v. Allen, 120 App. Div. 548, 105 N. Y. Supp. 16; State ex rel. Oliver v. Grubb, 85 Ind. 213; Hagadorn v. Raux, 72 N. Y. 583; Vason v. City of Augusta, 38 Ga. 542; North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, 32 C. C. A. 84; Davenport v. Caldwell, 10 S. C. 317. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[50] Mayor, etc., of Baltimore v. Marriott, 9 Md. 160, 66 Am. Dec. 326; Magaha v. Hagerstown, 95 Md. 62, 51 Atl. 832, 93 Am. St. Rep. 317; Rankin v. Buckman, 9 Or. 253. *See "Municipal Corporations," Dec. Dig. (Key No.) §§ 56–63; Cent. Dig. §§ 148–154.*

but imperative.[51] A statute by which municipal corporations are "authorized and empowered" to provide for the support of indigent persons within their limits is mandatory, and does not leave it in their discretion to neglect making provision for such relief.[52] Statutes which authorize the authorities of municipal corporations to make public improvements, as to open and repair streets, remove obstructions from highways, build or maintain public bridges, construct sewers, and the like, are to be construed as mandatory, although they only purport to grant permission or authority, since the public have an interest in such matters, and the grant of authority is therefore equivalent to the imposition of a duty.[53] But this rule must not be pushed so far as to deprive municipal officers of a discretion which the legislature plainly meant to intrust to them; and where the matter is not so much a public duty as a question of expediency, which can best be determined by the municipal officers for themselves, words of mere permission will not be taken in an imperative sense.[54] Where a statute directs the officers of municipal corporations to invite bids for the construction of public works or improvements, and directs that they "may" contract with the lowest responsible bidder, it is not permissive, but mandatory, be-

[51] Flynn v. Canton Co. of Baltimore, 40 Md. 312, 17 Am. *Rep. 603. See "Health," Dec. Dig. (Key No.) § 20; Cent. Dig. § 24; "Municipal Corporations," Dec. Dig. (Key No.) §§ 589, 597; Cent. Dig. §§ 1308, 1319, 1325, 1354.*

[52] Inhabitants of Veazie v. Inhabitants of China, 50 Me. 518. *See "Paupers," Dec. Dig. (Key No.) §§ 2, 3; Cent. Dig. §§ 9, 10.*

[53] Phelps v. Hawley, 52 N. Y. 23; Peotone & Manteno Union Drainage Dist. No. 1 v. Adams, 163 Ill. 428, 45 N. E. 266; Hines v. City of Lockport, 60 Barb. (N. Y.) 378; Brokaw v. Commissioners of Highways of Bloomington Tp., 130 Ill. 482, 22 N. E. 596, 6 L. R. A. 161; Mayor, etc., of City of New York v. Furze, 3 Hill (N. Y.) 612; Central Vermont R. Co. v. Royalton, 58 Vt. 234, 4 Atl. 868; People v. Common Council of City of Brooklyn, 22 Barb. (N. Y.) 404; Doane v. City of Omaha, 58 Neb. 815, 80 N. W. 54. *See "Municipal Corporations," Dec. Dig. (Key No.) §§ 265, 266; Cent. Dig. §§ 711–715.*

[54] El Paso Gas, Electric Light & Power Co. v. City of El Paso, 22 Tex. Civ. App. 309, 54 S. W. 798; People ex rel. Chiperfield v. Sanitary Dist. of Chicago, 184 Ill. 597, 56 N. E. 953. *See "Municipal Corporations," Dec. Dig. (Key No.) §§ 265, 266; Cent. Dig. §§ 711–715.*

cause what they are required to do is for the benefit of the public, the object being to invite competition and prevent favoritism and fraud in awarding such contracts.[55]

On the same principle, where a statute provides that a certain court "may" appoint three commissioners to settle a disputed boundary line between towns, the word "may" is equivalent to "shall," because the public interest is involved; and hence, in such a case, the towns in question cannot agree that only two commissioners may be appointed.[56]

IMPERATIVE TERMS CONSTRUED AS DIRECTORY

154. The words "shall" and "must," as used in statutes, are generally imperative or mandatory; but they may be construed as merely directory, in order to carry out the legislative intention, effect justice, or save the validity of proceedings, where no right or benefit to any one depends on their being taken in the imperative sense, and where no public or private right is impaired by their interpretation in the other sense.

The occasions when it is proper for the courts to soften the imperative force of such words as "shall" and "must," and read them as merely directory, are chiefly of three sorts: First, where a consideration of the entire statute and of its objects and purposes shows that the legislature cannot reasonably be supposed to have intended a strict and positive command; second, where the precept is addressed to the courts, and purports to control and command them

[55] McBrian v. City of Grand Rapids, 56 Mich. 95, 22 N. W. 206; People ex rel. Putnam v. Buffalo County Com'rs, 4 Neb. 150; Follmer v. Nuckolls County Com'rs, 6 Neb. 204. *See "Municipal Corporations," Dec. Dig. (Key No.) §§ 327, 336; Cent. Dig. §§ 850, 862.*

[56] Inhabitants of Monmouth v. Inhabitants of Leeds, 76 Me. 28. *See "Boundaries," Dec. Dig. (Key No.) §§ 51, 52; Cent. Dig. §§ 252–263.*

in respect to some matter which is properly the subject of judicial discretion;[57] and, third, where action taken, rights acquired, or proceedings had under the statute must be adjudged void for want of compliance with its terms if these words are to be read in their strict sense, but may be sustained if they are construed as directory only. In all of these cases, if no public or private advantage is lost, right destroyed, or benefit sacrificed by the interpretation of these words in a merely permissive or directory sense, but, on the contrary, the cause of justice is promoted thereby, it is proper for the courts so to construe them.[58]

But with respect to the duties of executive and administrative officers, these words can be construed as directory only in so far as they may relate to the manner or form of doing the thing prescribed. As to the substance of the enactment—whether or not the action prescribed shall be taken—the words "shall" and "must" are imperative, and exclude the idea of any discretion in the officer as to whether the duty imposed shall be performed or not.[59]

[57] See infra, p. 553.

[58] Cairo & F. R. Co. v. Hecht, 95 U. S. 170, 24 L. Ed. 423; Wheeler v. City of Chicago, 24 Ill. 105, 76 Am. Dec. 736; People ex rel. Chiperfield v. Chicago Sanitary Dist., 184 Ill. 597, 56 N. E. 953; City of Madison v. Daley (C. C.) 58 Fed. 753; First Nat. Bank of Helena v. Neill, 13 Mont. 377, 34 Pac. 180; West Wisconsin R. Co. v. Foley, 94 U. S. 100, 24 L. Ed. 71; Clemens Electrical Mfg. Co. v. Walton, 168 Mass. 304, 47 N. E. 102; Suburban Light & Power Co. v. Aldermen of Boston, 153 Mass. 200, 26 N. E. 447, 10 L. R. A. 497; Brinkley v. Brinkley, 56 N. Y. 192; People v. McAdam, 28 Hun (N. Y.) 284; In re O'Hara, 40 Misc. Rep. 355, 82 N. Y. Supp. 293; Jenkins v. Putnam, 106 N. Y. 272, 12 N. E. 613; In re Thurber's Estate, 162 N. Y. 244, 56 N. E. 631; Granite Bituminous Pav. Co. v. McManus, 144 Mo. App. 593, 129 S. W. 448. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[59] Attorney General v. Lock, 3 Atk. 164; Grant v. Mayor, etc., of City of Newark, 28 N. J. Law, 491; In re O'Rourke, 9 Misc. Rep. 564, 30 N. Y. Supp. 375; Ex parte Farrell, 36 Mont. 254, 92 Pac. 785. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

STATUTES REGULATING TIME OF OFFICIAL ACTION

155. When a statute specifies the time at or within which an act is to be done by a public officer or body, it is generally held to be directory only as to the time, and not mandatory, unless time is of the essence of the thing to be done, or the language of the statute contains negative words, or shows that the designation of the time was intended as a limitation of power, authority, or right.[60]

"Where there is no substantial reason why the thing to be done might not as well be done after the time prescribed as before, no presumption that by allowing it to be so done it may work an injury or wrong, nothing in the act itself, or in other acts relating to the same subject-matter, indicating that the legislature did not intend that it should rather be done after the time prescribed than not to be done at all, there the courts assume that the intent was that, if not done within the time prescribed, it might be done afterwards; but when any of these reasons intervene, there the limit is established." [61] "In general, where a statute imposes upon a public officer the duty of performing some act relating to the interests of the public, and fixes a time for the doing of such act, the requirement as to time is to

[60] Rex v. Loxdale, 1 Burr. 445; Caldow v. Pixell, L. R. 2 C. P. Div. 562; Juliand v. Rathbone, 39 N. Y. 369; United States Trust Co. of New York v. United States Fire Ins. Co., 18 N. Y. 199; People v. Allen, 6 Wend. (N. Y.) 486; St. Louis County Court v. Sparks, 10 Mo. 117, 45 Am. Dec. 355; People ex rel. Board of Sup'rs of Solano County v. Board of Sup'rs of Lake County, 33 Cal. 487; Hart v. Plum, 14 Cal. 148; Walker v. Chapman, 22 Ala. 116; Ryan v. Vanlandingham, 7 Ind. 416; Pond v. Negus, 3 Mass. 230, 3 Am. Dec. 131; Wilson v. State Bank of Alabama, 3 La. Ann. 196; Bell v. Taylor, 37 La. Ann. 56; Swenson v. McLaren, 2 Tex. Civ. App. 331, 21 S. W. 300. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[61] State ex rel. Cothren v. Lean, 9 Wis. 279, 292. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

be regarded as directory, and not a limitation of the exercise of the power, unless it contains some negative words, denying the exercise of the power after the time named, or from the character of the act to be performed, the manner of its performance, or its effect upon public interests or private rights, it must be presumed that the legislature had in contemplation that the act had better not be performed at all than be performed at any other time than that named." [62]

For example, where the statute requires a public officer to take an official oath within fifteen days after his appointment, this is directory as to the time, and it will be sufficient if he qualifies before any official act is done by him.[63] So, also, statutes fixing the time for public officers to file their official bonds are merely directory; they may file such bonds at any time before entering upon the duties of their office.[64] Again, a statutory provision that grand jurors "shall be summoned at least five days before the first day of the court" at which their attendance is required, is merely directory to the sheriff and for the convenience of the jurors. Probably a juror not so summoned might refuse to attend, but the requirement is not essential to be observed in order to constitute a legal grand jury.[65] So where a statute under which a county issued bonds, a series of which fell due annually for a period of ten years, pro-

[62] State v. Smith, 67 Me. 328. See, also, Magee v. Commonwealth, to Use of City of Pittsburgh, 46 Pa. 358. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[63] Howland v. Luce, 16 Johns. (N. Y.) 135. But the authorities do not sanction the extension of this rule to similar provisions incorporated in the constitution of the state. A constitutional direction that all officers shall qualify and enter upon the discharge of the duties of their offices within fifteen days after they shall have been notified of their election is mandatory, and not directory. State v. Johnson, 26 Ark. 281. *See "Officers," Dec. Dig. (Key No.) §§ 35, 36; Cent. Dig. §§ 49, 51, 53.*

[64] McRoberts v. Winant, 15 Abb. Prac. N. S. (N. Y.) 210. *See "Officers," Dec. Dig. (Key No.) § 37; Cent. Dig. §§ 54–59.*

[65] Johnson v. State, 33 Miss. 363; State v. Pitts, 58 Mo. 556; State v. Smith, 67 Me. 328. *See "Grand Jury," Dec. Dig. (Key No.) § 9; Cent. Dig. §§ 21–26.*

vided that "as soon as" certain prescribed conditions were complied with, "and annually thereafter for a period of ten years," the county commissioners should levy and assess a tax sufficient to pay the series falling due each year, it was held that the failure to assess and collect the tax within the time prescribed did not thereafter limit or destroy the power to levy and collect the tax, but that the power existed so long as the legal obligation to pay the debt subsisted.[66] Where an act provided that "the commissioners shall return the assessment roll within forty days," but no public or private rights required that the word "shall" should be construed in an imperative sense, it was held to be merely directory as to the time.[67] Where the charter of a municipal corporation enacts that the council, on or before the first day of March in each and every year, shall direct and authorize the city solicitor to proceed to sell lands for delinquent taxes, this is so far directory in fixing the time that valid sales may be made afterwards.[68] Again, where the statute makes provision for the issuing of a warrant against a defaulting tax collector and the sureties on his official bond, and specifies the time within which such warrant shall issue, the sureties are not discharged from liability by the omission of the county treasurer to issue the warrant within the designated time. For since the provision as to time is for the benefit of the public, it is directory only, in that respect, as regards the defaulter; and if directory as to him, it is so also with respect to his sureties and others who may be incidentally affected by the warrant or the proceedings on it.[69] On the same principle, a statute re-

[66] Commissioners' Court of Limestone County v. Rather, 48 Ala. 433. And see State ex rel. Anderson v. Harris, 17 Ohio St. 608; Duncan v. Cox, 41 Ind. App. 61, 82 N. E. 125. *See "Statutes," Dec. Dig. (Key No.) §§ 227, 245; Cent. Dig. §§ 308, 309, 326.*

[67] Wheeler v. City of Chicago, 24 Ill. 105, 76 Am. Dec. 736. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[68] Hugg v. City Council of Camden, 39 N. J. Law, 620. *See "Municipal Corporations," Dec. Dig. (Key No.) § 980; Cent. Dig. §§ 2124–2133.*

[69] Looney v. Hughes, 30 Barb. (N. Y.) 605. *See "Taxation," Cent. Dig. § 1111.*

quiring a judge of an inferior court who tries a cause without a jury to give his decision on or before the first day of the term succeeding that in which the cause was submitted, is only directory.[70] And so, where the officers of a municipal corporation are directed to be elected annually, the words are directory, and do not take away the power incident to the corporation to elect afterwards, when the annual day has, by some means, free from design or fraud, been passed by.[71] Again, where state officers are required by statute to advertise for sealed proposals for supplies or work to be done for the state, this direction is imperative. But if the act also requires that the proposals shall be deposited in a certain office on or before a designated day, this is not to be construed as a limitation upon the power of the officers in receiving and accepting such proposals.[72] For similar reasons, it is held that a provision in a statute, that the secretary of state shall cause it to be published "three months," etc., is only directory, and consequently his neglect to do so will not affect the operation of the statute.[73]

But the specification of time in a statute may be imperative, and may operate as a limitation upon the power of those who are to act under it. This will depend upon the intention of the legislature; and an intention to make time of the essence of the thing to be done may be disclosed either by the express language of the law or by necessary implications from its terms. Thus, where a statute directs

[70] Rawson v. Parsons, 6 Mich. 401. "It imposes a duty upon the judge, but as the parties have no control over his action, it would be a harsh construction which should deprive them of the fruits of the litigation because the judge fails to decide by a particular day." Id. *See "Trial," Dec. Dig. (Key No.) § 390; Cent. Dig. § 913.*

[71] People ex rel. Young v. Trustees of Town of Fairbury, 51 Ill. 149. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[72] Free Press Ass'n v. Nichols, 45 Vt. 7. But compare Webster v. French, 12 Ill. 302. *See "States," Dec. Dig. (Key No.) § 98; Cent. Dig. § 95.*

[73] State v. Click, 2 Ala. 26. *See "States," Dec. Dig. (Key No.) § 98; Cent. Dig. § 95.*

the doing of a thing, but expressly prohibits its performance until another thing shall have been done, the prohibition cannot be disregarded or construed as merely directory.[74] Again, where a duty is required by statute to be performed on a certain day, and the object contemplated by the legislature cannot otherwise be carried into effect, the time prescribed must be considered as a mandatory and imperative requirement.[75] And so, a provision of a city charter which prohibits the passing or adoption of certain kinds of resolutions by the common council, until two days after the publication thereof in all the newspapers employed by the corporation, is not merely directory. It imposes a limitation upon the power of the council, and is therefore to be regarded as mandatory; and an ordinance or resolution not so published is void, and action taken under it is invalid.[76] And where time is fixed in a statute for the purpose of giving a hearing to a party concerned and whose rights may be affected by action taken under it, or for some other purpose important to him, it cannot generally be construed as directory in this respect.[77]

STATUTES REGULATING OFFICIAL ACTION IN MATTERS OF FORM

156. Statutory provisions regulating official action in matters of form are to be regarded as merely directory, where they are designed only to promote order and convenience in the discharge of the public business, and where the public interests or private rights do not depend upon their strict observance.

[74] Stayton v. Hulings, 7 Ind. 144. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[75] Colt v. Eves, 12 Conn. 243. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[76] In re Petition of Douglass, 46 N. Y. 42. *See "Municipal Corporations," Dec. Dig. (Key No.) § 110; Cent. Dig. § 239.*

[77] Fay v. Wood, 65 Mich. 390, 32 N. W. 614. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

Irregularities in official action, consisting in the neglect or lack of strict compliance with statutory directions, should not be allowed to vitiate the proceedings taken under a statute, when the objects and ends of the statute have been substantially accomplished, and neither the public nor private persons are injured by the course of proceedings.[78] For instance, a statute required that the official bonds of certain officers should be made to the people as obligee. But inasmuch as the obligee named in such a bond has no active duty to perform, and no voice in taking or approving the bond or in bringing suit upon it, and there is no importance in the people being named as obligee rather than the county, it being important only that some party shall be named as promisee in whose name suits may be brought, the provision for naming the people was considered as merely directory; so that a bond, otherwise good and sufficient, would not be void simply because it was made to the county instead of the people.[79] So, also, it has been held that a statute which requires sales of land on execution, where the property consists of known lots or parcels, to be made separately and not in gross, is directory. A sale made in gross would be irregular, and might be set aside at the instance of the party aggrieved, but would not be void.[80] And a statute requiring a sheriff, after selling land on execution, to file a certificate of sale in the clerk's office is likewise directory only. His omission to comply will not invalidate the sale nor be regarded as taking away the right to issue a deed in pursuance of the sale.[81] A statutory provision

[78] People ex rel. Johnson v. Earl, 42 Colo. 238, 94 Pac. 294; Hurford v. City of Omaha, 4 Neb. 336; White v. Crump, 19 W. Va. 583; Granite Bituminous Pav. Co. v. McManus, 144 Mo. App. 593, 129 S. W. 448; Reid v. Southern Development Co., 52 Fla. 595, 42 South. 206; Ferris Press Brick Co. v. Hawkins (Tex. Civ. App.) 116 S. W. 80. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[79] Bay County v. Brock, 44 Mich. 45, 6 N. W. 101. *See "Counties," Dec. Dig. (Key No.) § 64; Cent. Dig. §§ 91–96.*

[80] Cunningham v. Cassidy, 17 N. Y. 276. But compare Hemmer v. Hustace, 51 Hun, 457, 3 N. Y. Supp. 850. *See "Execution," Dec. Dig. (Key No.) § 224; Cent. Dig. §§ 636–639.*

[81] Jackson ex dem. Hooker v. Young, 5 Cow. (N. Y.) 269, 15 Am. Dec. 473. *See "Execution," Dec. Dig. (Key No.) § 241; Cent. Dig. § 668.*

that, at the meeting of the board of supervisors of a county, the minutes of the board shall be read over and signed by the president is merely directory; it should be scrupulously observed, but yet the omission to do so will not affect the validity of the proceedings of the board.[82] So, also, a law requiring the minutes of a court to be signed by the judge is merely directory; and the minutes are valid, though not so signed, unless it is shown that the court rejected them.[83] Again, an act authorizing a town to issue bonds declared that they should be signed by the chairman of the town board of supervisors and the town clerk, "and have annexed to them the official certificate of the clerk of the county board of supervisors, under his official seal, that they are such officers and that their signatures are genuine." The act did not provide who should obtain such certificate, nor when it should be made, nor what should be its effect, nor that it should be annexed to the bonds before they were issued, nor that without it they should be invalid; nor did it contain any language raising a presumption that the legislature intended that the annexing of such certificate should precede the delivery of the bonds or be essential to their validity. It was accordingly held that the provision as to such certificate was designed merely to facilitate the negotiation of the bonds, and it was not essential to their valid execution and issue that such certificate should be annexed.[84] On similar principles, it is held that a clause in the charter of a corporation providing that its stock shall be transferable only on its books is for the security of the corporation, and does not prevent the title to stock from passing, as between vendor and vendee, by any other mode of transfer.[85] Again, a statute requiring the court to limit

[82] Arthur v. Adam, 49 Miss. 404. *See "Counties," Dec. Dig. (Key No.) § 53; Cent. Dig. §§ 66–70.*

[83] Justices of Inferior Court of Talbot County v. House, 20 Ga. 328. *See "Courts," Dec. Dig. (Key No.) § 113; Cent. Dig. §§ 365, 366.*

[84] Lackawana Iron & Coal Co. v. Town of Little Wolf, 38 Wis. 152. *See "Towns," Dec. Dig. (Key No.) § 52; Cent. Dig. §§ 90–94.*

[85] Duke v. Cahawba Nav. Co., 10 Ala. 82, 44 Am. Dec. 472. *See "Corporations," Dec. Dig. (Key No.) §§ 128–136; Cent. Dig. §§ 479–492, 513, 528, 538.*

the time of sentence of a convict, so that his imprisonment in the state prison shall expire some time between March and November, is merely directory, and a failure to comply with such requirement does not render the sentence void.[86] So the statute of Vermont, providing that all warnings for school district meetings shall, before the same are posted, be recorded by the clerk, is regarded as directory only, so that a failure to record the warning will not render a meeting illegal.[87]

Even in the case of provisions found in the constitution of the state, instead of acts of the legislature, a similar rule obtains, and it is held that mere directions as to matters of form, not involving the public interests or private rights, may be considered as not imperative. Thus, where the constitution provides that the style of all laws of the state shall be "Be it enacted," etc., this requirement is not mandatory; an act regularly passed by the legislature may be valid though this clause is omitted.[88] And it is said that a clause in the state constitution requiring the Supreme Court to "decide every point fairly arising upon the record and give its reasons therefor in writing," is merely directory.[89] But, as we have pointed out in an earlier chapter, the courts should proceed with great hesitation and diffidence in assuming to dispense with the imperative force of any provision incorporated in so solemn and enduring an instrument as the constitution.[90]

The language, or the purport, of a statute may show that it was the legislative intention that its requirements, even in matters of form, should be exactly followed; and of course where this is the case, the rule under consideration

[86] Miller v. Finkle, 1 Parker, Cr. R. (N. Y.) 374. *See "Criminal Law," Cent. Dig. § 3317.*

[87] Adams v. Sleeper, 64 Vt. 544, 24 Atl. 990. *See "Schools and School Districts," Dec. Dig. (Key No.) § 50; Cent. Dig. §§ 113–125.*

[88] City of Cape Girardeau v. Riley, 52 Mo. 424, 14 Am. Rep. 427; McPherson v. Leonard, 29 Md. 377; Swann v. Buck, 40 Miss. 268. *See "Statutes," Dec. Dig. (Key No.) § 40; Cent. Dig. § 44.*

[89] Henry v. Davis, 13 W. Va. 230. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Judgment," Cent. Dig. § 1156.*

[90] See ante, p. 27.

has no application. For instance, where a statute provides that orders of a certain kind may be made by two of a board of three commissioners, provided it appears in the order that they all met and deliberated on the subject-matter or were duly notified to attend a meeting for the purpose of deliberating thereon, an order made by two of the commissioners, which does not show the above jurisdictional facts, will have no validity.[91] Especially in carrying out proceedings conducted under the power of taxation or that of eminent domain, which are in their nature summary and liable to abuse, to the prejudice of the citizen, the courts are not prone to dispense with any requirements which may possibly be for the benefit or protection of the individual. "In carrying out laws for condemning private property to public uses, it has always been held necessary to strictly observe every material requirement, and the courts have been equally constant in insisting that the proceedings should affirmatively show upon their face a substantial adherence to the course prescribed by the legislature." [92]

JUDICIAL DUTIES AND PROCEEDINGS

157. Statutes imposing duties on the courts, in respect to the conduct, course, or determination of proceedings before them, will be construed as directory only, where the matter to which they relate is a proper subject for the exercise of judicial discretion, notwithstanding the use of imperative terms.

158. But where a particular individual has an absolute and unqualified right to the benefit of the statute, the action directed to be taken in his behalf not being a subject for the exercise of judicial discretion, the statute will be construed as mandatory, even though its terms, literally interpreted, would be merely permissive.

[91] Fitch v. Com'rs of Highways of Kirkland, 22 Wend. (N. Y.) 132. *See "Taxation," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[92] Kroop v. Forman, 31 Mich. 144. *See "Eminent Domain," Dec. Dig. (Key No.) § 167; Cent. Dig. § 452.*

159. Statutes regulating the inception or conduct of judicial proceedings, but not imposing a specific duty on the court or judge, will be construed as mandatory, if either the public or a private person has a fixed right to the benefit of the statute; otherwise, their terms will be read in their natural and ordinary sense.

Statutory Directions to Courts

The word "shall," when used by the legislature in the way of imposing a duty on the courts or requiring them to take action, is usually held to import no more than a grant of authority, and is read as equivalent to "may." [93] The reason is that the legislative branch of the government has no power to lay commands upon the judiciary in respect to any matter involving judgment or the exercise of judicial discretion, nor in any matter not of a merely ministerial or routine character. "The legislature is as powerless to coerce judicial action as the courts are to issue mandamus against the Governor or the legislature, each being independent of each of the others within their respective spheres of duty." [94]

Matters Involving Exercise of Judicial Discretion

A statutory mandate addressed to a court or judge, no matter how positive and imperative may be its terms, will be construed as merely granting authority or jurisdiction, when the subject to which it relates is one upon which it is proper and usual for courts to exercise their judgment and their judicial discretion, and where no party has a fixed and absolute right to demand that action under the statute shall be taken in his behalf.[95] Thus a statutory pro-

[93] Becker v. Lebanon & M. St. Ry. Co., 188 Pa. 484, 41 Atl. 612; Beasley v. People, 89 Ill. 571; Borkheim v. Firemen's Fund Ins. Co., 38 Cal. 505; Sherrod & Co. v. Hughes, 110 Tenn. 311, 75 S. W. 717. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[94] People ex rel. American Ice Co. v. Nussbaum, 32 Misc. Rep. 1, 66 N. Y. Supp. 129. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[95] People, to Use of McKee, v. Abbott, 105 Ill. 588; Cavanaugh v. Scott, 84 Wis. 93, 54 N. W. 328; Sifford v. Beaty, 12 Ohio St.

vision that, in an action founded on a nuisance, the nuisance "may be enjoined and abated," is directory only, so that, on recovering damages for a permanent nuisance, the plaintiff is not entitled as a matter of right to an injunction or an order of abatement.[96] So in a statute providing that, where corporations are acting outside of their franchises, the court "shall" by injunction restrain such injurious acts, the word is not mandatory but is a grant of authority.[97] A statute authorizing trust companies to act as executors or administrators, and providing that the surrogate may, on the application of a party in interest, grant letters of administration to such a company, does not deprive him of discretion in the matter nor imperatively require him to make such an appointment when requested.[98] So, where the law provides that the probate court "may" remove an executor for certain specified causes, it is to be understood as granting a discretionary power of removal which is not compulsory on the court, even though one of the specified causes exists.[99] So a statute providing that if an executor or administrator shall neglect or fail to return an inventory at the proper time, the court shall revoke his letters, is not mandatory, but vests a discretion in the court as to whether or not the revocation shall be made in the particular case.[100]

Statutes Granting Substantive Rights to Litigants

Where the statute directs certain action to be taken or relief granted in proceedings in the courts, on the occur-

189; Caldwell v. State, 34 Ga. 10; The Shelbourne (D. C.) 30 Fed. 510; In re Rutledge, 162 N. Y. 31, 56 N. E. 511, 47 L. R. A. 721; Smith v. Harrington, 3 Wyo. 503, 27 Pac. 803. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[96] Downing v. City of Oskaloosa, 86 Iowa, 352, 53 N. W. 256. *See "Nuisance," Dec. Dig. (Key No.) § 57; Cent. Dig. § 133.*

[97] Becker v. Lebanon & M. St. Ry. Co., 188 Pa. 484, 41 Atl. 612. *See "Injunction," Dec. Dig. (Key No.) §§ 67, 68; Cent. Dig. § 135.*

[98] In re Goddard's Estate, 94 N. Y. 544. *See "Executors and Administrators," Cent. Dig. § 43.*

[99] Cutler v. Howard, 9 Wis. 309. *See "Executors and Administrators," Dec. Dig. (Key No.) § 35; Cent. Dig. §§ 227–262.*

[100] Clancy v. McElroy, 30 Wash. 567, 70 Pac. 1095. *See "Executors and Administrators," Dec. Dig. (Key No.) § 32; Cent. Dig. §§ 191–212.*

rence of stated facts, and intends that a party entitled to the benefit of the statute shall have an absolute right thereto, not subject to the discretion of the court, the word "shall" is imperative, and when the facts occur, the court cannot refuse to take the prescribed action or grant the specified relief. This is true, for example, of a statute providing that costs "shall be awarded" in certain circumstances,[101] that a new trial shall be granted in an action of ejectment,[102] or that the court shall vacate a judgment taken against a party through his mistake, inadvertence, surprise, or excusable neglect.[103] The rule is the same, though the words of the statute are permissive only. Thus a party has an absolute right to costs, when his case comes within the terms of the statute, although it is only provided that they "may" be awarded to him,[104] except where the context shows that it was not the intention of the legislature to grant such an unqualified right, which is the case, for example, where the law directs that the court may "in its discretion" award costs.[105] So, also, in a statute providing that the court may grant a change of venue, or order the removal of the cause to another court for trial, when it appears that a fair and impartial trial cannot be had at the place where the suit was brought, the word "may" will be read as equivalent to "must." On a proper application and showing of facts, the party is absolutely

[101] Wood v. Brown, 6 Daly (N. Y.) 428; First Nat. Bank of Helena v. Neill, 13 Mont. 377, 34 Pac. 180. *See "Costs," Dec. Dig. (Key No.) §§ 4, 11–15; Cent. Dig. §§ 2, 3, 20–25, 109, 110, 231.*

[102] Rogers v. Wing, 5 How. Prac. (N. Y.) 50. *See "Ejectment," Dec. Dig. (Key No.) § 112; Cent. Dig. §§ 346–351.*

[103] Smith v. Noe, 30 Ind. 117; Haseltine v. Simpson, 61 Wis. 427, 21 N. W. 299; Hull v. Vining, 17 Wash. 352, 49 Pac. 537; Pope v. Pollock, 1 O. C. D. 193; Johnston v. Pate, 95 N. C. 68. *See "Judgment," Dec. Dig. (Key No.) §§ 344, 362–371; Cent. Dig. §§ 673, 705–711.*

[104] Carter v. Barnum, 24 Misc. Rep. 220, 53 N. Y. Supp. 539; Grantman v. Thrall, 31 How. Prac. (N. Y.) 464; Crake v. Powell, 10 Eng. Law & Eq. 329. *See "Costs," Dec. Dig. (Key No.) §§ 4, 11–15; Cent. Dig. §§ 2, 3, 20–25, 109, 110, 231.*

[105] Darby v. Condit, 1 Duer (N. Y.) 599; Allen v. Wells, 22 Ind. 118. *"See Costs," Dec. Dig. (Key No.) §§ 11–15; Cent. Dig. §§ 20–25, 231.*

entitled to a change of venue, and the court has no discretion to refuse it.[106]

On the same principle, a statute providing that a final decree shall be allowed in certain cases means that the decree must be allowed when it is asked for by one who stands in such a relation to the cause that he can demand it.[107] And where an act provides that the judge of the probate court "may" set apart a homestead for the widow and minor children of a decedent, it is meant that, in a proper case, he "must" do so, because the persons mentioned have a right to claim that the power shall be exercised.[108] So, where the statute provides that, on the dissolution of a corporation, and on the application of a creditor or stockholder, the court "may" appoint a receiver, it is not in the discretion of the court to refuse, but the requirement of the statute is imperative.[109] Where the law provides that the court "may" allow interest on the damages given in an action, from the time the verdict was returned to the time of rendering judgment thereon, the court must allow interest and has no discretion to refuse.[110] A statute providing that, on the filing of a prescribed affidavit, the court "may" continue the cause, is mandatory, and the court has no discretion to refuse a continuance.[111]

[106] Falls of Neuse Mfg. Co. v. Brower, 105 N. C. 440, 11 S. E. 313; Freud v. Rohnert, 131 Mich. 606, 92 N. W. 109; Ex parte Chase, 43 Ala. 303; Richardson v. Augustine, 5 Okl. 667, 49 Pac. 930; In re Brown, 2 Okl. 590, 39 Pac. 469; Jones v. Town of Statesville, 97 N. C. 86, 2 S. E. 346; State v. Kent, 4 N. D. 577, 62 N. W. 631, 27 L. R. A. 686; Kansas Pac. Ry. Co. v. Reynolds, 8 Kan. 623. Contra, Ex parte Banks, 28 Ala. 28. *See "Venue," Dec. Dig. (Key No.) §§ 34, 42; Cent. Dig. §§ 52, 64.*

[107] Ex parte Jordan, 94 U. S. 248, 24 L. Ed. 123. *See "Judgment," Dec. Dig. (Key No.) §§ 193, 217; Cent. Dig. §§ 352, 353, 394.*

[108] Demartin v. Demartin, 85 Cal. 71, 24 Pac. 594; Hoppe v. Hoppe (Cal.) 36 Pac. 389; Estate of Ballentine, 45 Cal. 696. *See "Homestead," Dec. Dig. (Key No.) §§ 134–153; Cent. Dig. §§ 245–306.*

[109] Havemeyer v. San Francisco Superior Court, 84 Cal. 327, 24 Pac. 121, 10 L. R. A. 627, 18 Am. St. Rep. 192. *See "Corporations," Dec. Dig. (Key No.) § 621; Cent. Dig. §§ 2461–2469.*

[110] Forbes v. Inhabitants of Bethel, 28 Me. 204. *See "Interest," Dec. Dig. (Key No.) §§ 3, 21; Cent. Dig. §§ 3, 42.*

[111] Chicago Public Stock Exchange v. McClaughry, 148 Ill. 372, 36

So a provision that, when the personal estate of a decedent is not sufficient for the payment of debts, the executor "may" petition the court for leave to sell real estate, is imperative, and the word "may" will be interpreted as equivalent to "must." [112] A statute providing that an action "may be dismissed" by the court, in case of failure of the plaintiff to appear or to prosecute, or for failure to join proper parties, is generally understood to be imperative; that is, if the defendant demands a dismissal, the court must order it.[113] In a statute providing that the garnishee may, if required by the plaintiff, be examined orally in the presence of the court, "may" means, "must," for the reason that a third person is interested by right in the enforcement of its provisions.[114] A provision that a judge may sign a bill of exceptions after he ceases to be judge is for the benefit of the party entitled, and hence is to be understood in an imperative sense.[115]

Acts Regulating Pleading and Practice

In regard to the regulation of matters of mere practice or procedure in the courts, it is not usually the case that either the general public or any private individual has a fixed right to insist that particular steps shall be taken, or

N. E. 88. *See "Continuance," Dec. Dig. (Key No.) §§ 2, 7; Cent. Dig. §§ 2, 17, 18.*

[112] Pelletier v. Saunders, 67 N. C. 261. *See "Executors and Administrators," Dec. Dig. (Key No.) §§ 320, 325; Cent. Dig. §§ 1332½, 1339–1341.*

[113] Lee v. Mutual Reserve Fund Life Ass'n, 97 Va. 160, 33 S. E. 556; Kansas City, W. & N. W. R. Co. v. Walker, 50 Kan. 739, 32 Pac. 365; Buena Vista Freestone Co. v. Parrish, 34 W. Va. 652, 12 S. E. 817. But see, per contra, Knight v. Fisher, 15 Colo. 176, 25 Pac. 78; Perkins v. Butler, 42 How. Prac. (N. Y.) 102; Echols' Ex'r v. Brennan, 99 Va. 150, 37 S. E. 786. A statutory provision that an attachment process without bond and affidavit is void, and shall be dismissed, can be considered in no other light than as a command to the court. Tyson v. Hamer, 2 How. (Miss.) 669. *See "Dismissal and Nonsuit," Dec. Dig. (Key No.) §§ 52, 60; Cent. Dig. §§ 104, 140–152.*

[114] Ex parte Cincinnati, S. & M. Ry. Co., 78 Ala. 258. *See "Garnishment," Dec. Dig. (Key No.) § 149; Cent. Dig. § 272.*

[115] Montana Ore Purchasing Co. v. Lindsay, 25 Mont. 24, 63 Pac. 715. *See "Exceptions, Bill of," Dec. Dig. (Key No.) § 32; Cent. Dig. §§ 37–41, 71; "Judges," Cent. Dig. §§ 98, 103, 122, 144, 149, 157, 162.*

taken in a given order, or would be materially prejudiced by their omission or their regulation after a different fashion. Hence, in these matters, a statutory provision that such or such action "may" be taken is seldom construed as mandatory; the word being taken in its natural sense.[116] But yet, if the statute confers upon a litigant a substantial right, the deprivation of which would injure him or prejudice his case, it comes within the general rule applicable to such cases, and must be considered as mandatory, so that the court has no discretion to disregard its directions.[117]

In regard to fixing the venue of actions, it is the rule that a statute providing that actions of a given kind "may be brought" in a given place or jurisdiction is not imperative or exclusive, and does not prevent the maintenance of an action in a court elsewhere, provided it would have had jurisdiction before the enactment of the statute.[118] So, also, as to the joinder of parties, and the calling and examination of witnesses. A provision that, in actions for the

[116] Morse v. Press Pub. Co., 71 App. Div. 351, 75 N. Y. Supp. 976; Brothers v. Pickel, 31 N. J. Eq. 647; Ballard v. Purcell, 1 Nev. 342; New York & Erie R. R. Co. v. Coburn, 6 How. Prac. (N. Y.) 223; State v. Williams, 4 Idaho, 502, 42 Pac. 511; Kane v. Footh, 70 Ill. 587; Atchison, T. & S. F. R. Co. v. Lawler, 40 Neb. 356, 58 N. W. 968; Deane v. Willamette Bridge Co., 22 Or. 167, 29 Pac. 440, 15 L. R. A. 614; Atlantic & D. R. Co. v. Peake, 87 Va. 130, 12 S. E. 348. *See "Statutes," Dec. Dig. (Key No.) §§ 227, 243; Cent. Dig. §§ 308, 309, 324.*

[117] People ex rel. Society of Free Church of St. Mary the Virgin v. Feitner, 168 N. Y. 494, 61 N. E. 762; Mercy Hospital v. City of Chicago, 187 Ill. 400, 58 N. E. 353; Inhabitants of Monmouth v. Inhabitants of Leeds, 76 Me. 28; Whitten v. State, 61 Miss. 717. *See "Statutes," Dec. Dig. (Key No.) §§ 227, 243; Cent. Dig. §§ 308, 309, 324.*

[118] Equitable Life Ins. Co. of Iowa v. Gleason, 56 Iowa, 47, 8 N. W. 790; Dean v. White, 5 Iowa, 266; Carson v. Phœnix Ins. Co., 41 W. Va. 136, 23 S. E. 552; State v. Sweetsir, 53 Me. 438; Heavor v. Page, 161 Mass. 109, 36 N. E. 750; Osborn v. Lidy, 51 Ohio St. 90, 37 N. E. 434. But see, per contra, Walton v. Walton, 96 Tenn. 25, 33 S. W. 561; Western Travelers' Acc. Ass'n v. Taylor, 62 Neb. 783, 87 N. W. 950; Schuyler County v. Mercer County, 9 Ill. 20; Randolph County v. Ralls, 18 Ill. 29. *See "Venue," Dec. Dig. (Key No.) §§ 2, 3; Cent. Dig. §§ 1, 2.*

abatement of a liquor nuisance, the owner of the building and others interested in it, as well as the keeper of the place, "may" be made parties, is not mandatory; it leaves it to the discretion of the prosecuting attorney whether to join them or not.[119] In a statute regulating the practice in actions for divorce, and providing that the plaintiff may examine the witnesses orally in court or take their deposition, a privilege is given to the parties litigant for their benefit or convenience, which they may exercise or not in their discretion.[120] And a provision that, in a contest over the execution of an alleged will, an issue "shall" be made up and sent to a jury, will be considered as permissive only.[121]

But, on the other hand, where a statute allowing appeals in certain cases provides that the appeal must be taken, or notice thereof served, within a fixed number of days after the rendition of judgment, it is mandatory as to the time, although its words may be permissive on their face.[122] And so, under a statute providing that, where an issue of fact or law is tried by the court, its decision in writing "must" be filed within a certain time, and, if not so filed, the court must make an order for a new trial, the term is used in its mandatory sense.[123]

In regard to such matters as the amendment of pleadings, the filing of supplemental or additional pleadings, and the like, it appears to be decided that a statute declaring that such action "may" be taken is permissive only, if the intention of the legislature to confide the matter to the

[119] State v. Massey, 72 Vt. 210, 47 Atl. 834. *See "Intoxicating Liquors," Dec. Dig. (Key No.) § 271; Cent. Dig. § 407.*

[120] Bansemer v. Mace, 18 Ind. 27, 81 Am. Dec. 344. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[121] Whipple v. Eddy, 161 Ill. 114, 43 N. E. 789. *See "Jury," Dec. Dig. (Key No.) § 19; Cent. Dig. §§ 111, 178.*

[122] James v. Dexter, 112 Ill. 489; Fleming v. City of Appleton, 55 Wis. 90, 12 N. W. 462; Seattle & M. R. Co. v. O'Meara, 4 Wash. 17, 29 Pac. 835. *See "Appeal and Error," Dec. Dig. (Key No.) §§ 338, 356; Cent. Dig. §§ 1879–1882, 1926, 1927.*

[123] Hodecker v. Hodecker, 39 App. Div. 353, 56 N. Y. Supp. 954. *See "Trial," Dec. Dig. (Key No.) § 403; Cent. Dig. §§ 954–956.*

discretion of the court can be discerned,[124] but that if it appears to have been the meaning of the legislature that a party in interest should have an absolute right to the benefit of the statute, then the permissive word should be read as "shall" or "must." [125]

Where a statute grants a new right or power, or provides a new remedy, not existing at common law, but wholly created and regulated by the statute, and prescribes the mode of enforcing or pursuing it, its terms are mandatory, and not directory (though couched in language which is permissive when taken in its ordinary signification); and that mode of exercising the power or right, or pursuing the remedy, must be followed to the exclusion of all others, and exactly as the statute directs.[126]

The rule requiring the strict construction of penal and criminal statutes may also have a bearing on this question. Thus it is held that an act providing penalties for violations of the game laws and directing that actions for the recovery thereof "shall" be actions of trespass, cannot be construed as merely directory; being a penal statute, it cannot be extended by implication.[127]

[124] Medbury v. Swan, 46 N. Y. 200; Bolling v. Mayor, etc., of Town of Petersburg, 3 Rand. (Va.) 563; Bartley v. Smith, 43 N. J. Law, 321. *See "Pleading," Dec. Dig. (Key No.) §§ 231, 276, 285; Cent. Dig. §§ 594–598, 833, 835.*

[125] Welsh v. Solenberger, 85 Va. 441, 8 S. E. 91; Drought v. Curtis, 8 How. Prac. (N. Y.) 56; Cooke v. Spears, 2 Cal. 409, 56 Am. Dec. 348; Roberts v. Bartlett, 26 Mo. App. 611; Birdsong v. Brooks, 7 Ga. 88. *See "Pleading," Dec. Dig. (Key No.) §§ 231, 276, 285; Cent. Dig. §§ 594–598, 833, 835.*

[126] Reed v. Penrose's Ex'rs, 2 Grant Cas. (Pa.) 472; Platter v. Elkhart County Com'rs, 103 Ind. 360, 2 N. E. 544; Storms v. Stevens, 104 Ind. 46, 3 N. E. 401; Stephens v. Jones (S. D.) 123 N. W. 705 *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309.*

[127] Buck v. Danzenbacker, 37 N. J. Law, 359. *See "Game," Dec. Dig. (Key No.) § 8; Cent. Dig. § 8.*

LAWS AUTHORIZING TAXATION

160. Statutes which authorize or permit municipal corporations to levy and collect taxes will be construed as mandatory, when the purposes to which such taxes are to be devoted are such as concern the necessary public duties of the municipality or the just rights of private persons.

Where authority or permission is granted to a municipal corporation to levy and collect a tax for a special purpose, as, to pay a judgment against the municipality, to pay the interest on its bonded debt, to pay a claim for damages to private property by the opening of a street, to reimburse municipal officers for expenses incurred, to build and maintain necessary public buildings, and, generally, where the proceeds of the tax are necessary to carry on the proper functions of the municipality or to do justice to private individuals, the statute will be construed as mandatory and imperative, in whatever terms expressed, and as positively requiring the exercise of the power granted.[128] Even though the law provides that the proper public officers may levy a tax "if deemed advisable," or "if they believe the public good and the best interests of the city require it," still it will not be understood as merely permissive, if the public welfare or private rights demand that the tax shall be levied. If, for instance, the money is to be used to pay

[128] Rock Island County Sup'rs v. United States ex rel. State Bank, 4 Wall. 435, 18 L. Ed. 419; Kennedy v. City of Sacramento (C. C.) 19 Fed. 580; People v. Livingston County Sup'rs, 68 N. Y. 114; People ex rel. Reynolds v. Common Council of City of Buffalo, 140 N. Y. 300, 35 N. E. 485, 37 Am. St. Rep. 563; State ex rel. Clark v. Buffalo County Com'rs, 6 Neb. 454; People v. Otsego County Com'rs, 51 N. Y. 401; People ex rel. Rollins v. Board of County Com'rs of Rio Grande County, 7 Colo. App. 229, 42 Pac. 1032; Exchange Bank of Virginia v. Lewis County, 28 W. Va. 273; Commonwealth v. Marshall, 3 Wkly. Notes Cas. (Pa.) 182; Village of Kent v. United States, 113 Fed. 232, 51 C. C. A. 189; Rex v. Barlow, 2 Salk. 609. *See "Municipal Corporations," Dec. Dig. (Key No.) §§ 956–965; Cent. Dig. §§ 2010–2044.*

the bonded debt of a city, which has no other means of meeting its obligations, the discretion apparently given by such a statute cannot be exercised in the direction of refusing to impose the tax. In such a case, the power granted to the municipal officers is in the nature of a trust for the benefit of the creditors, and the law requires that it shall be exercised.[129]

AUDIT AND PAYMENT OF PUBLIC DEBTS

161. Statutes which provide for the auditing, settlement, and payment of debts and claims against the state or a municipal corporation are mandatory, although expressed in terms which only purport to permit or authorize such action to be taken by the proper officers.

A private person holding a just claim against a municipal corporation or the state has an absolute right to the benefit of a statute making provision for its adjustment and payment. And although such a statute may be merely permissive in its terms, as where it provides that the proper officers "may" audit and pay the claim, or that they are "hereby authorized and empowered" to do so, yet it will be construed as imperative, and as imposing a positive duty on such officers not subject to their choice or discretion.[130]

[129] Rock Island County Sup'rs v. United States ex rel. State Bank, 4 Wall. 435, 18 L. Ed. 419; Galena v. Amy, 5 Wall. 705, 18 L. Ed. 560. *See "Municipal Corporations," Dec. Dig. (Key No.) §§ 956–965; Cent. Dig. §§ 2010–2074.*

[130] Bowen v. City of Minneapolis, 47 Minn. 115, 49 N. W. 683, 28 Am. St. Rep. 333; People v. Board of Sup'rs of Erie County, 1 Sheld. (N. Y.) 517; People v. Sup'rs of Otsego County, 36 How. Prac. (N. Y.) 1 (repayment of taxes illegally assessed and collected); People ex rel. Reynolds v. Common Council of City of Buffalo, 140 N. Y. 300, 35 N. E. 485, 37 Am. St. Rep. 563; City of Cairo v. Campbell, 116 Ill. 305, 5 N. E. 114; Phelps v. Lodge, 60 Kan. 122, 55 Pac. 840; State ex rel. Fullheart v. Buckles, 39 Ind. 272; People v. Livingston County Sup'rs, 68 N. Y. 114; Hayes v. Los Angeles County, 99 Cal. 74, 33 Pac. 766; People ex rel. Dinsmore v. Gilroy, 82 Hun, 500, 31 N. Y. Supp. 776. *See "Statutes," Dec. Dig. (Key No.) § 227;*

GRANT OF LICENSES

162. Where a statute provides that licenses for the pursuit of particular occupations "may" be granted to persons possessing the prescribed qualifications, it does not give such a person a fixed right to receive a license, and hence will not be construed as mandatory. But if it directs that licenses "shall" be issued to such persons, the licensing authorities have no discretion to refuse.

It has been held in numerous cases that statutes providing that courts, commissioners, or other authorities "may" grant licenses for the sale of liquor or for the pursuit of other occupations, provided that an applicant therefor possesses certain qualifications and complies with certain conditions, are imperative; that a person who is and does all that the law requires of him has an absolute right to receive a license; and that nothing is left to the discretion of the licensing authorities.[131] But the decided preponderance of the authorities is the other way. It is held that a permissive word like "may," though it may be construed in an imperative sense for the purpose of sustaining a vested right, is not so interpreted merely to create one; that licensing authorities act in a judicial or quasi judicial capacity and are vested with discretion; and that they are justified in considering the circumstances of each particular case, and cannot be controlled by a word not naturally or pri-

Cent. Dig. §§ *308, 309; "Municipal Corporations," Dec. Dig.* (*Key No.*) §§ *1001–1015; Cent. Dig.* §§ *2173–2187; "States," Dec. Dig.* (*Key No.*) §§ *169–187; Cent. Dig.* §§ *161–177.*

[131] Ex parte Lester, 77 Va. 663; McLeod v. Scott, 21 Or. 94, 26 Pac. 1061; Leigton v. Maury, 76 Va. 865; State ex rel. Brockett v. City of Alliance, 65 Neb. 524, 91 N. W. 387; Miller v. Wade, 58 Ind. 91; Zanone v. City of Mound City, 11 Ill. App. 334; State v. Justices of Inferior Court of Morgan County, 15 Ga. 408. *See "Licenses." Dec. Dig.* (*Key No.*) §§ *8, 20; Cent. Dig.* §§ *16, 17, 55; "Intoxicating Liquors," Dec. Dig.* (*Key No.*) §§ *57–60, 69; Cent. Dig.* §§ *58, 59, 71, 72, 70, 73.*

marily mandatory in its signification.[132] This is, of course, even more strongly the case when words are added to show that discretion is to be exercised. Thus a statute providing that any graduate of a college of dentistry "may, at the discretion of the examining board," be registered without being subjected to an examination, is not to be interpreted as mandatory.[133] On the same principle, a statute whereby an officer or department of a municipal government is "authorized and empowered" to grant licenses for theatrical performances cannot be construed as requiring the issue of a license as a matter of right to every one who applies therefor and tenders the fee; it vests a discretionary power in the officer or department to grant or withhold a license according to the circumstances, though this discretion may be controlled by the courts by mandamus.[134] But, on the other hand, "shall," as used in a law or ordinance requiring certain persons to be licensed, and providing that licenses shall be granted to them by the mayor of a city, to carry on their respective trades or occupations, is mandatory, and does not give the mayor any discretion as to the grant or refusal of such licenses.[135]

[132] State ex rel. Kyger v. Holt County Court Justices, 39 Mo. 521; Ex parte Yeager, 11 Grat. (Va.) 655; Batters v. Dunning, 49 Conn. 479; Ex parte Persons, 1 Hill (N. Y.) 655; Toole's Appeal, 90 Pa. 376; Leister's Appeal (Pa.) 11 Atl. 387; French v. Noel, 22 Grat. (Va.) 454; Hein v. Smith, 13 W. Va. 358; Muller v. Buncombe County Com'rs, 89 N. C. 171; Pierce v. Commonwealth, 10 Bush (Ky.) 6; Ex parte Whittington, 34 Ark. 394; Ex parte Levy, 43 Ark. 42, 51 Am. Rep. 550; State ex rel. Reynolds v. Board of Com'rs of Tippecanoe County, 45 Ind. 501; State ex rel. Ossenkop v. Cass County Com'rs, 12 Neb. 54, 10 N. W. 571; Perry v. City Council of Salt Lake City, 7 Utah, 143, 25 Pac. 739, 11 L. R. A. 446; United States ex rel. Manion v. Com'rs of District of Columbia, 6 Mackey (D. C.) 409; Ailstock v. Page, 77 Va. 386; In re Raudenbusch, 120 Pa. 328, 14 Atl. 148. *See "Licenses," Dec. Dig. (Key No.) §§ 8, 20; Cent. Dig. §§ 16, 17, 55.*

[133] State v. Knowles, 90 Md. 646, 45 Atl. 877, 49 L. R. A. 695. *See "Physicians and Surgeons," Dec. Dig. (Key No.) §§ 1–5; Cent. Dig. §§ 1–5.*

[134] People ex rel. Worth v. Grant, 58 Hun, 455, 12 N. Y. Supp. 879; Armstrong v. Murphy, 65 App. Div. 123, 72 N. Y. Supp. 473. *See "Theaters and Shows," Dec. Dig. (Key No.) § 3; Cent. Dig. § 3.*

[135] Greater New York Athletic Club v. Wurster, 19 Misc. Rep. 443,

LAWS REGULATING TAX PROCEEDINGS

163. In statutes regulating the assessment and collection of taxes, those provisions which are designed to secure equality of taxation and are intended for the benefit and protection of the taxpayer are to be construed as mandatory; such as are meant only for the guidance of officers, and to secure uniformity, system, and dispatch in the conduct of the proceedings, may be considered as directory.

It would be beyond the scope of the present work to enter upon a detailed examination of the complicated system of laws and official proceedings by which the public revenues are levied and collected. It will be sufficient for the purposes of the discussion now in hand to explain the general rule which should govern the courts in determining whether any given provision of these laws is mandatory or merely directory, and to illustrate its practical workings by references to some of the more important steps in these proceedings. And first, as to the general rule: "One rule," says the Supreme Judicial Court of Massachusetts, "is very plain and well settled: That all those measures which are intended for the security of the citizen, for insuring an equality of taxation, and to enable every one to know, with reasonable certainty, for what polls and for what real and personal estate he is taxed, and for what all those who are liable with him are taxed, are conditions precedent, and if they are not observed he is not legally taxed, and he may resist it in any of the modes authorized by law for contesting the validity of the tax. But many regulations are made by statute, designed for the information of assessors and officers, and intended to promote method, system, and uniformity in the modes of proceeding, the compliance or non-

43 N. Y. Supp. 703. But compare Muller v. Buncombe County Com'rs, 89 N. C. 171. *See "Licenses," Dec. Dig. (Key No.) §§ 8, 20; Cent. Dig. §§ 16, 17, 55; "Municipal Corporations," Dec. Dig. (Key No.) § 621; Cent. Dig. §§ 1363–1369.*

compliance with which does in no respect affect the rights of taxpaying citizens. These may be considered directory; officers may be liable to legal animadversion, perhaps to punishment, for not observing them, but yet their observance is not a condition precedent to the validity of the tax." [136] Thus, specifically in regard to the assessment of the tax, "those legislative directions which have for their object the protection of the taxpayer against spoliation or excessive assessment must be treated as mandatory. But if there be enough to show that the assessment is so made and evidenced as to be understood, then regulations designed for the information of the assessors or other officers, intended to promote dispatch, method, system, and uniformity in modes of proceeding, are merely directory. So, clerical and ministerial duties, the observance or nonobservance of which does not affect the taxpayer injuriously, must be classed as directory." [137] For example, a statute enacting that "taxes on real estate shall be assessed to the owners, and separate tracts or parcels shall be separately described and valued as far as practicable," is mandatory, being for the benefit and protection of the taxpayer.[136] So a statute describing the form of oath which the assessors shall attach to the assessment roll is mandatory, and failure to verify the roll as required will invalidate the assessment.[139] So of a provision that notices of the rate of taxation shall be published in two newspapers of opposite politics, published

[136] Torrey v. Inhabitants of Millbury, 21 Pick. (Mass.) 64. And see People v. Auditor General, 41 Mich 28, 1 N. W. 890; Stockle v. Silsbee, 41 Mich. 615, 2 N. W. 900; Cromwell v. MacLean, 123 N. Y. 474, 25 N. E. 932. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) §§ 301, 310, 327, 365, 452, 545, 573, 615; Cent. Dig. §§ 486, 511–513, 550, 608–611, 806, 807, 1018, 1141–1144, 1264.*

[137] State Auditor v. Jackson County, 65 Ala. 142. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 301; Cent. Dig. § 486.*

[138] Young v. Joslin, 13 R. I. 675. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 341; Cent. Dig. § 574.*

[139] Warfield-Pratt-Howell Co. v. Averill Grocery Co., 119 Iowa, 75, 93 N. W. 80. *See "Taxation," Dec. Dig. (Key No.) § 433.*

at the county seat, if such there be.[140] But, on the other hand, a provision that "the taxable property of nonresidents shall be arranged in separate assessment lists" is merely directory to the assessors, and an assessment is not invalidated by their neglect to comply with this direction.[141]

A provision that certain officers of a municipality "may" correct erroneous assessments of property for taxation, or that they are "authorized and empowered" to hear and determine claims of illegal assessment, is not to be understood as giving them any option or discretion as to relieving citizens against unequal or illegal impositions; it is imperative, and obliges them to exercise the authority granted to them whenever application is made.[142] So, also, where the statute makes provision for a board of equalization, to review tax assessments, and expressly provides the time and place of the meeting of such board and the number of days it may remain in session, these provisions are imperative, and the board will have no authority to meet at any other time or place, or to do any official act after the expiration of the time limited. For, if it were otherwise, great injury and injustice might be done to taxpayers.[143] On the same principle, a statutory provision that the collector of taxes shall "attend at his office at the county seat until

[140] State v. Defiance County Com'rs, 32 Wkly. Law Bul. (Ohio) 88. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 305; Cent. Dig. § 498.*

[141] Adams v. Town of Seymour, 30 Conn. 402. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 412; Cent. Dig. § 687.*

[142] Adriance v. Sup'rs of New York, 12 How. Prac. (N. Y.) 224; City of Indianapolis v. McAvoy, 86 Ind. 587; People v. Herkimer County Sup'rs, 56 Barb. (N. Y.) 452; People v. Otsego County Sup'rs, 51 N. Y. 401. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 452; Cent. Dig. § 806.*

[143] Wiley v. Flournoy, 30 Ark. 609; Sumner v. Colfax Co., 14 Neb. 524, 16 N. W. 756. But in the case of a board before which the statute contemplates ex parte proceedings only, making no provision for contests by parties interested (as, a state board of equalization acting between counties), a statutory provision that it shall meet on a designated day in each year, for the purpose of transacting its official business, is merely directory as to the day. State Auditor v. Jackson County, 65 Ala. 142; Perry County v. Selma, etc.,

the 20th day of April in each year, to receive taxes from persons wishing to pay the same," is mandatory. "This provision," said the court, "was evidently intended for the benefit of taxpayers. All the authorities, everywhere, are uniform in holding that all such provisions are mandatory, and the observance of them is a condition precedent to any valid sale of land for taxes." [144] So, where the statute provides that the collector of taxes, before proceeding to sell land for taxes, shall give notice thereof by public advertisement, specifying the time and place of sale, the property to be sold, the amount due thereon, etc., this requirement is imperative, and its omission, or incomplete observance, will nullify all subsequent proceedings.[145]

With regard to all the provisions of the statute which relate to the time, place, and manner of conducting the sale of land for delinquent taxes, the courts are very strict in requiring an exact compliance on the part of those who are charged with the execution of the law. It is at this point that it is especially necessary to guard the rights of the taxpayer against fraud, imposition, or unfair dealing. Thus the sale must be held at the exact time and place specified by the law for that purpose, or designated in the advertisements. If not, it is a nullity. So strictly is this rule applied that there are cases holding that where the statute requires that the sale shall be made before the courthouse door of the county, and the sale is in fact made inside the courthouse, it is void and no title will pass.[146] So, where the law directs that tax sales shall be held "on the first Monday

R. Co., 65 Ala. 391. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 476; Cent. Dig. §§ 845–849.*

[144] Hare v. Carnall, 39 Ark. 196. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 614; Cent. Dig. § 1263.*

[145] Milner v. Clarke, 61 Ala. 258; Black, Tax Titles, § 205, and many cases there cited. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 658; Cent. Dig. §§ 1332–1335.*

[146] Rubey v. Huntsman, 32 Mo. 501, 82 Am. Dec. 143; Koch v. Bridges, 45 Miss. 247; Richards v. Cole, 31 Kan. 205, 1 Pac. 647; Black, Tax Titles, § 227. *See "Statutes," Dec. Dig. (Key No.) § 227;*

of November in each year, between the hours of nine o'clock a. m. and four o'clock p. m.," the sale must be kept open, for the reception of bids, from nine to four; otherwise it is not valid.[147] And where the law contemplates that separate parcels of land shall be separately offered for sale, though they are all assessed to the same owner, and that only so much shall be sold as may be needed to pay the taxes and charges against all, this provision is mandatory, and must be strictly followed, even though the language of the statute, on this point, is only permissive in form.[148] And so, where, as is most commonly the case, statutes providing for the sale of land for the nonpayment of taxes provide that a period of time shall be allowed for the owner to redeem from the sale, and that the purchaser at the tax sale, or the officer whose duty it is, shall give to such owner a notice of the expiration of the time for redemption, such a provision is to be construed as mandatory. It must be strictly complied with; and the omission to give the prescribed notice, or the service of a notice not conforming to the statute, will invalidate the subsequent tax deed.[149] It is also held that a provision that a certificate of tax sale "may" be in a specified form means that it must be in such form.[150]

Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 655; Cent. Dig. §§ 1265, 1346.

[147] State ex rel. Snow v. Farney, 36 Neb. 537, 54 N. W. 862. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 656; Cent. Dig. § 1347.*

[148] Mason v. Fearson, 9 How. 248, 13 L. Ed. 125. So of a statutory provision that an officer, in selling land for delinquent taxes, shall sell only the smallest quantity of the land which any purchaser will take and pay the taxes and costs. French v. Edwards, 13 Wall. 506, 20 L. Ed. 702. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 671; Cent. Dig. § 1354.*

[149] Doughty v. Hope, 3 Denio (N. Y.) 594; Hendrix v. Boggs, 15 Neb. 469, 20 N. W. 28; Black, Tax Titles, § 329. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 701; Cent. Dig. §§ 1407–1411.*

[150] Chicago & A. R. Co. v. People ex rel. Wood, 163 Ill. 616, 45 N. E. 122; Gilfillan v. Hobart, 35 Minn. 185, 28 N. W. 222. *See "Statutes," Dec. Dig. (Key No.) § 227; Cent. Dig. §§ 308, 309; "Taxation," Dec. Dig. (Key No.) § 686; Cent. Dig. §§ 1377–1379.*

LAWS REGULATING ELECTIONS

164. Statutory provisions regulating the conduct of public elections, if not made mandatory by the express terms of the law, will be construed as so far directory that the election will not be nullified by mere irregularities, not fraudulently brought about, when the departure from the prescribed method was not so great as to throw a substantial doubt on the result, and where it is not shown that there was any obstacle to a fair and free expression of the will of the electors.

"If the law itself declares a specified irregularity to be fatal, the courts will follow that command, irrespective of their views of the importance of the requirement. In the absence of such declaration, the judiciary endeavor, as best they may, to discern whether the deviation from the prescribed forms of law had or had not so vital an influence on the proceedings as probably prevented a free and full expression of the popular will. If it had, the irregularity is held to vitiate the entire return; otherwise, it is considered immaterial. It has been sometimes said, in this connection, that certain provisions of election laws are mandatory and others directory. These terms may perhaps be convenient to distinguish one class of irregularities from the other. But strictly speaking, all provisions of such laws are mandatory, in the sense that they impose the duty of obedience on those who come within their purview. But it does not therefore follow that every slight departure therefrom should taint the whole proceedings with a fatal blemish. Courts justly consider the chief purpose of such laws, namely, the obtaining of a fair election and an honest return, as paramount in importance to the minor requirements which prescribe the formal steps to reach that end; and in order not to defeat the main design, are frequently led to ignore such innocent irregularities of election officers as are free of fraud and have not interfered with a full and

fair expression of the voters' choice." [151] Thus, for example, a statutory provision as to the place at which the polls shall be maintained for an election is directory, in so far as that the election will not be invalidated by being held at another place, if there were necessary and sufficient reasons for making the change, and all the voters knew of it, and there was no fraud or improper motive for making the change, and no voter complains that he was deprived thereby of an opportunity to vote.[152] So, where a statute regulating the law of elections provides that the polls shall be kept open, on the day of the election, between certain hours, it is presumably the intention of the legislature that there should be no closing of the polls between those hours, and, on the other hand, that they should not be open after the hour limited. But this provision is so far directory that an election is not invalidated by the fact that the election officers opened the polls a short time before the hour fixed, or closed them a short time before the proper hour, or closed the polls for an hour in the middle of the day, if it is not shown that any fraud was practised or any substantial right violated, or that there was any obstruction or impediment to a full and fair expression of the will of the people.[153] But, on the other hand, a statute which forbids the vote of any person to be received at any election within the state, unless his name be on the registry made on a

[151] Bowers v. Smith, 111 Mo. 45, 20 S. W. 101, 16 L. R. A. 754, 33 Am. St. Rep. 491. "It is a well recognized principle of statutory construction that election laws are to be liberally construed when necessary to reach a substantially correct result; and to that end their provisions will, to every reasonable extent, be treated as directory rather than mandatory." Duncan v. Shenk, 109 Ind. 26, 9 N. E. 690. And see State ex rel. Davis v. State Board of Canvassers, 86 S. C. 451, 68 S. E. 676. *See "Elections," Dec. Dig. (Key No.) § 10; Cent. Dig. § 7.*

[152] Dale v. Irwin, 78 Ill. 170; Farrington v. Turner, 53 Mich. 27, 18 N. W. 544, 51 Am. Rep. 88; Preston v. Culbertson, 58 Cal. 198; Wakefield v. Patterson, 25 Kan. 709. *See "Elections," Dec. Dig. (Key No.) §§ 190, 203; Cent. Dig. §§ 170, 179, 181.*

[153] Fry v. Booth, 19 Ohio St. 25; Holland v. Davies, 36 Ark. 446; Cleland v. Porter, 74 Ill. 76, 24 Am. Rep. 273. *See "Elections," Dec. Dig. (Key No.) §§ 206–208; Cent. Dig. §§ 182–184.*

previous day, or unless he shall furnish to the board of inspectors a certain affidavit and certain specified proof of his residence in the district, is imperative; and all votes received in violation of those provisions will be rejected by the court in an action to try title to an office.[154] As used in a statute providing that the canvassers of elections may dispatch a messenger to the inspectors of elections who made the returns, commanding them to complete the returns in the manner specified by law, in case of omissions or improper certificates, the word "may" should be construed to mean "must."[155]

[154] State ex rel. Doerflinger v. Hilmantel, 21 Wis. 574. And so, the statute requiring the governor to issue his proclamation of election to fill vacancies in certain offices is mandatory and an essential prerequisite to all such elections. People ex rel. McKune v. Weller, 11 Cal. 49, 70 Am. Dec. 754. So it is also with a statute requiring the production of a registration certificate and proof of the payment of all taxes assessed against the voter. State ex rel. Davis v. State Board of Canvassers, 86 S. C. 451, 68 S. E. 676. And so of a statute prescribing the manner of marking the ballots of illiterate voters and those physically disabled. Cole v. Nunnelly, 140 Ky. 138, 130 S. W. 972. *See "Elections," Dec. Dig. (Key No.) §§ 95, 97; Cent. Dig. §§ 92, 95, 96.*

[155] Rich v. Board of State Canvassers, 100 Mich. 453, 59 N. W. 181; State ex rel. McDill v. Board of State Canvassers, 36 Wis. 498. *See "Elections," Dec. Dig. (Key No.) § 259; Cent. Dig. § 235.*

CHAPTER XIV

AMENDATORY AND AMENDED ACTS

165. Construction of Amendments.
166. Construction of Statute as Amended.
167. Scope of Amendatory Act.
168. Amendment by Way of Revision.
169. Identification of Act to be Amended.
170. Retroactive Construction of Amendatory Acts.

CONSTRUCTION OF AMENDMENTS

165. An original act and an amendment to it should be read and construed as one act.

When an amendment to a statute is adopted, there are not two separate enactments, the old and the new, but by their union there is produced one law, namely, the statute as amended. From this it follows that the legislative intention, in making the amendment, is to be learned from a consideration of the original act and the amendment as one act.[1] And consequently, on the principle that the interpretation is to be such, if possible, as to give effect to every clause and provision of every statute, no portion of either the original act or the amendment should be declared inoperative if it can be sustained by any rational construction and without putting upon the language employed a forced or unnatural meaning.[2] As a part of this rule, it is to be presumed that the legislature, in enacting the amendment, intended to make a change in the law as it stood previously, and the construction should be such as to give effect to this intention and carry out the purpose of the

[1] Attorney General v. Lewis, 151 Mich. 81, 114 N. W. 927; Lewis v. State, 148 Ind. 346, 47 N. E. 675. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[2] Harrell v. Harrell, 8 Fla. 46; Zelig v. Blue Point Oyster Co., 54 Or. 543, 104 Pac. 193; Coal & Coke Ry. Co. v. Conley (W. Va.) 67 S. E. 613. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

amendment, not such as to leave the law unchanged.[3] For the same reason, of two constructions, either of which is warranted by the words of an amendatory act, that is to be preferred which best harmonizes the amendment with the general tenor and spirit of the act amended.[4] So also, in construing an amendatory statute, the mischiefs or hardships produced by the old law must be considered, together with the remedy proposed by the new.[5] And it will be presumed that a word used in a certain sense in the original act is used in the same sense where it occurs in the amendatory act.[6]

CONSTRUCTION OF STATUTE AS AMENDED

166. An amended statute is to be construed as if it had read from the beginning as it does with the amendment added to it or incorporated in it.[7]

[3] People v. Weinstock, 117 App. Div. 168, 102 N. Y. Supp. 349; United States v. A. J. Woodruff & Co., 175 Fed. 776, 99 C. C. A. 348. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[4] Griffin's Case, Chase, 364, Fed. Cas. No. 5,815; Attorney General v. Lewis, 151 Mich. 81, 114 N. W. 927; Old Dominion Building & Loan Ass'n v. Sohn, 54 W. Va. 101, 46 S. E. 222. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[5] People ex rel. Livergood v. Greer, 43 Ill. 213; Maus v. Logansport, etc., R. Co., 27 Ill. 77. Where the object of an act is to cure a defect in the old law, it is but reasonable to suppose that the legislature intended to do so as effectually, broadly, and completely as the language used, when understood in any fair and reasonable sense, would indicate. Howes Bros. v. Dolan, 9 Pa. Super. Ct. 586. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[6] Robbins v. Omnibus R. Co., 32 Cal. 472; Browne v. Turner, 174 Mass. 150, 54 N. E. 510. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[7] Goldman v. Kennedy, 49 Hun, 157, 1 N. Y. Supp. 599; Peters v. Vawter, 10 Mont. 201, 25 Pac. 438; Kamerick v. Castleman, 21 Mo. App. 587; George v. Wood, 94 Miss. 268, 49 South. 147; Stiers v. Mundy (Ind.) 92 N. E. 374; Pomeroy v. Beach, 149 Ind. 511, 49 N. E. 370; Parks v. State, 159 Ind. 211, 64 N. E. 862, 59 L. R. A. 190; Russell v. State, 161 Ind. 481, 68 N. E. 1019; Woodall v. Boston Elevated Ry. Co., 192 Mass. 308, 78 N. E. 446; People ex rel. Attorney General v. Michigan Cent. R. Co., 145 Mich. 140, 108 N. W. 772; In re Locust Avenue, 185 N. Y. 115, 77 N. E. 1012; Mosle v. Bidwell,

An amendment of a statute by a subsequent act operates precisely as if the subject-matter of the amendment had been incorporated in the prior act at the time of its adoption, so far as regards any action had after the amendment is made.[8] For it must be remembered that an amendment becomes a part of the original act, whether it be a change of a word, figure, line, or entire section, or a recasting of the whole language.[9] For example, the act of Congress "to correct errors and supply omissions in the Revised Statutes" amends the Revised Statutes by adding to them certain provisions of existing statutes; but the amendments are not in the nature of new enactments; they are to be construed as though the Revised Statutes were originally adopted with these alterations incorporated therein.[10] And where an amendatory act uses the language "under the limitations herein provided," this must be taken to refer to the limitations in the original act as it stands after all the amendments made thereto are introduced into their proper places therein.[11] Nevertheless, the rule that an amended statute is to be understood as if it had read from the beginning as amended, must not be so applied as to defeat the plain intent of the legislature in amending it. This doctrine was applied in a case where an amendment, adopted more than twenty years after the statute was passed, pro-

130 Fed. 334, 65 C. C. A. 533. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[8] Holbrook v. Nichol, 36 Ill. 161; Turney v. Wilton, Id. 385; Conrad v. Nall, 24 Mich. 275; Farrell v. State, 54 N. J. Law, 421, 24 Atl. 725; McKibben v. Lester, 9 Ohio St. 627; State v. Bock, 167 Ind. 559, 79 N. E. 493; State ex rel. v. Adams Express Co., 171 Ind. 138, 85 N. E. 337, 19 L. R. A. (N. S.) 93. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[9] People v. Sweetser, 1 Dak. 308, 46 N. W. 452. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[10] Ludington v. United States, 15 Ct. Cl. 453. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[11] McKibben v. Lester, 9 Ohio St. 627. Where a statute of 1872 speaks of the consolidation of corporations "now existing," and is amended in 1889 by an act which sets out its provisions and repeats that clause, the statute, as it stands amended, refers to corporations existing at the date of the original act, not at the time of the amendment. Barrows v. People's Gaslight & Coke Co. (C. C.) 75 Fed. 794. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

vided that actions on judgments "heretofore rendered" should be brought within ten years after entry thereof. It would obviously be incorrect, in such a case, to confine the provision to judgments rendered before the passage of the original act. The true reading is that "heretofore" means before the passage of the amendment.[12] It should be observed that an unconstitutional amendatory act cannot be considered as affecting, for the purposes of construction, the law as it stood prior to the passage of the amendment.[13]

SCOPE OF AMENDATORY ACT

167. An amendatory statute is to be confined, in its scope and operation, to the limits of the act to which it is an amendment, unless the intention of the legislature to give it a wider field of operation is manifest.

For example, where a statute is limited, in its operation, to certain localities, an act amendatory thereof can have no wider scope than the original act, unless it is expressly so provided in the amendment.[14] And an amendment of a section of the statutes prescribing the practice in the circuit court does not, by implication, amend another section wherein a similar practice has been prescribed for justices' courts.[15] On similar principles, an act which declares that the provisions of a special act shall apply to another city than that for which it was passed has not the effect of making subsequent amendments to the original act applicable to the second city.[16]

[12] People ex rel. Parsons v. Wayne County Circuit Judge, 37 Mich, 287. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[13] City of Los Angeles v. Lelande, 11 Cal. App. 302, 104 Pac. 717. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[14] United States v. Crawford, 6 Mackey (D. C.) 319. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[15] Jones v. St. Onge, 67 Wis. 520, 30 N. W. 927. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[16] Knapp v. City of Brooklyn, 97 N. Y. 520. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

It would be equally erroneous, however, to give to the amendment a narrower range and scope than that of the law which it amends, where it purports to operate upon the existing statute as a whole rather than upon a particular part of it or expression in it. In the absence of express or implied restrictions, a statute amending previous acts must be taken to have the same general and extensive application as the statutes which it amends.[17] But where the amendment is addressed to one particular section of a general statute, it effects, of course, the intended change in that section but does not affect the rest of the act; it leaves that section, as before, to be construed with the rest of the statute, and subject to its provisions as far as applicable, all the several parts and sections mutually acting on each other as their sense requires.[18] And where the amendatory act purports to amend only a designated clause in another statute, there is a presumption that that is the only clause to which the legislature intended it to apply.[19] Further, an amendment is frequently designed to bring within the operation of the statute a particular case which was originally omitted or not foreseen, or to remove a substantial doubt as to whether the statute was meant to cover that case or not. In this instance, the amendment should not be construed as affecting the general provisions of the original act, further than may be necessary to introduce the special case provided for. And it is said that the action of the legislature in amending a statute so as to make it directly applicable to a particular case is not a conclusive admission that it did not originally cover such a case.[20]

[17] Chase v. United States, 7 App. D. C. 149. *See "Statutes," Dec Dig. (Key No.) § 230; Cent. Dig. § 311.*

[18] Conrad v. Nall, 24 Mich. 275; Township of Lebanon v. Burch, 78 Mich. 641, 44 N. W. 148; State v. American Sugar Refining Co., 106 La. 553, 31 South. 181; United States v. Choctaw, O. & G. R. Co., 3 Okl. 404, 41 Pac. 729. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[19] Healey v. Wheeler, 75 N. H. 214, 72 Atl. 753. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

[20] Rural Independent School Dist. No. 10 v. New Independent School Dist., 120 Iowa, 119, 94 N. W. 284. *See "Statutes," Dec. Dig. (Key No.) § 230; Cent. Dig. § 311.*

AMENDMENT BY WAY OF REVISION

168. Where an amendment is made by declaring that the original statute "shall be amended so as to read as follows," retaining part of the original statute and incorporating therein new provisions, the effect is not to repeal, and then re-enact, the part retained, but such part remains in force as from the time of the original enactment, while the new provisions become operative at the time the amendatory act goes into effect, and all such portions of the original statute as are omitted from the amendatory act are abrogated thereby and are thereafter no part of the statute.[21]

When an amendatory act provides that the original statute shall be amended "so as to read as follows," and thereupon repeats some of the clauses or provisions of the amended statute and omits others, and at the same time introduces certain new clauses or sections, there are three points which must be chiefly noticed in regard to its operation and effect. In the first place, as to those portions of the original statute which the amendatory act simply retains, it is not generally to be construed as a new enactment. It does not repeal those provisions and then reenact them in the same terms, but they are to be considered

[21] Ely v. Holton, 15 N. Y. 595; Moore v. Mausert, 49 N. Y. 332; Matter of Peugnet, 67 N. Y. 441; Goillotel v. Mayor, etc., of New York, 87 N. Y. 440; The Louis Olsen, 6 C. C. A. 608, 57 Fed. 845; Central Pac. R. Co. v. Shackelford, 63 Cal. 261; Burwell v. Tullis, 12 Minn. 572 (Gil. 486); Kamerick v. Castleman, 21 Mo. App. 587; State v. Mines, 38 W. Va. 125, 18 S. E. 470. Where the title of an amendatory statute sets forth distinctly the verbal changes which it intends to make in the law amended, and there is nothing to indicate an intention to make any other changes, its effect will be limited to the changes so specified, notwithstanding the fact that the recital as to how the statute will read after amendment omits a clause not mentioned in the title. Abernathy v. Mitchell, 113 Ga. 127, 38 S. E. 303. *See "Statutes," Dec. Dig. (Key No.) §§ 137, 141, 230; Cent. Dig. §§ 48, 198, 204, 209, 311.*

as remaining in force from the time of the original enactment, and as being merely continued in operation by the amendatory statute.[22] In some of the states, this principle has been made into a statutory rule of construction. Thus, in Kansas, it is provided that "the provisions of any statute, so far as they are the same as those of any prior enactment, shall be construed as a continuation of such provisions, and not as an amendment, unless such construction would be inconsistent with the manifest intent of the legislature." But under this rule it is held that where the legislature enacts a law which is the same in terms as a former statute, yet if such former statute has prior thereto wholly accomplished its purpose and exhausted its force, the latter law must be held to be a new enactment, and not merely a continuation of the former; for this case comes within the exception.[23] In the second place, those provisions which are newly added by the amendatory statute are not to be considered as having been in force from the beginning. They take effect from the time of the enactment of the amendatory act, and derive their whole efficacy and vitality from the amending law and not from that amended. In other words, such new provisions will not have any retrospective effect, unless it is explicitly so declared.[24] In the third place, all those provisions of the original statute which are not repeated in the amending statute are abrogated or repealed thereby, and are thereafter of no force or effect whatever.[25] In this particular, the amendatory act is to

[22] Moore v. Mausert, 5 Lans. (N. Y.) 173; Id., 49 N. Y. 332. But compare Dimpfel v. Beam, 41 Colo. 25, 91 Pac. 1107. *See "Statutes," Dec. Dig. (Key No.) §§ 141, 230; Cent. Dig. §§ 48, 198, 209, 311.*

[23] City of Emporia v. Norton, 16 Kan. 236. *See "Statutes," Dec. Dig. (Key No.) §§ 141, 230; Cent. Dig. §§ 48, 198, 209, 311.*

[24] Kelsey v. Kendall, 48 Vt. 24; State v. Hindson, 40 Mont. 354, 106 Pac. 362; Homnyack v. Prudential Ins. Co. of America, 194 N. Y. 456, 87 N. E. 769. *See "Statutes," Dec. Dig. (Key No.) §§ 141, 230; Cent. Dig. §§ 48, 198, 209, 311.*

[25] State v. Andrews, 20 Tex. 230; Goodno v. City of Oshkosh, 31 Wis. 127; People v. Board of Sup'rs of Montgomery County, 67 N. Y. 109, 23 Am. Rep. 94; Campbell v. Youngson, 80 Neb. 322, 114 N. W. 415. In the re-enactment of a statute with amendments, the omission of material words contained in the former law indicates an

be considered as a new enactment, and it is not even to be construed as in pari materia with the provisions of the old law which it has superseded or displaced. That is to say, the intention of the legislature, in the new portions of the amendatory act, is to be ascertained from that act itself, and such intention cannot be limited or modified by anything contained in the abrogated portions of the old law, on the theory that they are acts in pari materia and should therefore be construed together.[26]

When a statute, purporting to be amendatory of a former law, and declaring that the earlier act shall be amended "so as to read as follows," covers the entire ground occupied by the provisions of the original act, and is repugnant to its further operation, and is plainly designed to furnish the sole and complete system of legislation on that subject-matter, it must be construed as a new and independent enactment, and as entirely abrogating and repealing the former statute.[27] "A law purporting to be an amendment of another law may operate as a repeal of the original law, or it may not. If an amendment does not change the original law, but simply adds something to it, the amendatory law would not operate as a repeal of the old law. Where an amendment is made which changes the old law in its substantial provisions, it must, by a necessary implication, repeal the old law so far as they are in conflict. And when

intention to change the law. Jessee v. De Shong (Tex. Civ. App.) 105 S. W. 1011. But where the provision contained in the original act, and omitted from the amending act, was one which prohibited an act already unlawful or actionable at common law, and therefore did not create a liability but merely affirmed the common-law rule as to such liability, its omission from the amending act will not change or abrogate the rule prevailing at common law. Moss Point Lumber Co. v. Harrison County Sup'rs, 89 Miss. 448, 42 South. 290. *See "Statutes," Dec. Dig. (Key No.) §§ 141, 230; Cent. Dig. §§ 48, 198, 209, 311.*

[26] Cortesy v. Territory, 7 N. M. 89, 32 Pac. 504. *See "Statutes," Dec. Dig. (Key No.) §§ 141, 230; Cent. Dig. §§ 48, 198, 209, 311.*

[27] Commonwealth v. Kenneson, 143 Mass. 418, 9 N. E. 761; McGuire v. Chicago, B. & Q. R. Co., 131 Iowa, 340, 108 N. W. 902; Epperson v. New York Life Ins. Co., 90 Mo. App. 432; Boyce v. Perry, 26 Misc. Rep. 355, 57 N. Y. Supp. 214. *See "Statutes," Dec. Dig. (Key No.) §§ 141, 230; Cent. Dig. §§ 48, 198, 209, 311.*

a new law, whether it be in the form of an amendment or otherwise, covers the whole subject-matter of the former, and is inconsistent with it and evidently intended to supersede and take the place of it, it repeals the old law by implication." [28]

IDENTIFICATION OF ACT TO BE AMENDED

169. Unless the constitution otherwise specifically directs, it is sufficient if an amendatory act refers to the act to be amended in such a manner as to identify it substantially.

Thus, for example, where an amendatory act refers to the act to be amended by its date, title, and subject-matter, a mistake in the two former is immaterial, provided the reference to the latter renders certain the identity of the amended act.[29] And so, where the amendatory act first declares what the amendments shall be, and then makes a mistake in reciting the law as it will read when amended, such mistake will not vitiate the act.[30] But in many of the states the constitutions now contain a provision substantially as follows: "No act shall ever be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth and published at full length." "As we understand this clause of the constitution," says the court in Ohio, "it requires, in the case of an amendment of a section or sections of a prior statute, that the new act shall contain, not the section or sections which it proposes to amend, but the section or sections in full as it purports to amend them. That is, it requires, not a recital of the old

[28] Longlois v. Longlois, 48 Ind. 60. *See "Statutes," Dec. Dig. (Key No.) §§ 141, 230; Cent. Dig. §§ 48, 198, 209, 311.*

[29] Madison, W. & M. Plank Road Co. v. Reynolds, 3 Wis. 287. And see Dowda v. State, 74 Ga. 12. *See "Statutes," Dec. Dig. (Key No.) §§ 138, 230; Cent. Dig. §§ 205, 206, 311.*

[30] Custin v. City of Viroqua, 67 Wis. 314, 30 N. W. 515; Abernathy v. Mitchell, 113 Ga. 127, 38 S. E. 303. *See "Statutes," Dec. Dig. (Key No.) §§ 138, 230; Cent. Dig. §§ 205, 206, 311.*

section, but a full statement, in terms, of the new one. * * * The constitutional provision was intended, mainly, to prevent improvident legislation; and with that view, as well as for the purpose of making all acts, when amended, intelligible, without an examination of the statute as it stood prior to the amendment, it requires every section which is intended to supersede a former one to be fully set out. No amendments are to be made by directing specified words or clauses to be stricken from, or inserted in, a section of a prior statute which may be referred to, but the new act must contain the section as amended." [31] A constitutional provision of this character is generally regarded as mandatory; and it is said that the intention of the legislature in reference to an amendment of a statute is unimportant, unless manifested in the manner directed by the constitution.[32] But such a provision in the constitution is not considered as intended to make any new rule concerning the effect of an amendment. It relates only to the manner of making an amendment. Though the statute or section, as amended, is set out at length, the constitution does not make it a new enactment; but it remains subject to the rule that, in so far as it is changed by the amendment, it must receive a new operation, but in so far as it is not changed, it does not have the effect of disturbing the whole body of statutes in pari materia which had been passed since its first enactment.[33] It should also be remarked that the character of a statute, as amendatory of a prior act or as independent legislation, must be determined, not by the title alone, nor by the question whether the act professes to be an amendment of existing laws, but by an examination and comparison of its provisions with prior laws.[34]

[31] Lehman v. McBride, 15 Ohio St. 573, 602, 603. *See "Statutes," Dec. Dig. (Key No.) §§ 138, 230; Cent. Dig. §§ 205, 206, 311.*

[32] Dodd v. State, 18 Ind. 56. *See "Statutes," Dec. Dig. (Key No.) §§ 138, 230; Cent. Dig. §§ 205, 206, 311.*

[33] Gordon v. People, 44 Mich. 485, 7 N. W. 69. *See "Statutes," Dec. Dig. (Key No.) §§ 138, 230; Cent. Dig. §§ 205, 206, 311.*

[34] Hollingsworth v. Chicago & C. Coal Co., 243 Ill. 98, 90 N. E. 276. See *"Statutes," Dec. Dig. (Key No.) §§ 138, 230; Cent. Dig. §§ 205, 206, 311.*

RETROACTIVE CONSTRUCTION OF AMENDATORY ACTS

170. An amendatory statute, like other legislative acts, takes effect only from its passage, and will not be construed as retroactive or as applying to prior facts or transactions, or to pending proceedings, unless a contrary intention is expressly stated or necessarily implied.[35]

The foregoing rule is of broad and general application, and means that a new enactment, coming into the existing body of law by way of amendment, will not be held to abrogate or in any way modify rights, contracts, or proceedings originating before its enactment and which were dependent on or governed by the statute amended. Thus, as the amendment or revision of a statute is properly regarded as a continuation of the existing law (with the intended changes) it does not at common law cause the lapse or termination of proceedings pending when the amendment or revision goes into effect.[36] It may, of course, contain a saving clause, and such a provision will qualify the additions or new clauses introduced by the amending act, without affecting the pre-existing law itself.[37] But even without an express saving clause, where the new law is substantially a re-enactment of the old, merely changing modes of procedure, but not changing the tribunal or the basis of the right, and when it takes effect simultaneously with the repeal of the old law, it must be presumed that the legisla-

[35] In re St. Michael's Church, 76 N. J. Eq. 524, 74 Atl. 491; Dodge v. Nevada Nat. Bank, 109 Fed. 726, 48 C. C. A. 626; City of Geneva v. People, 98 Ill. App. 315; Montgomery v. Pierson, 7 Ind. 97; State v. Mount, 151 Ind. 679, 51 N. E. 417; Peters v. Harman, 27 Ohio Cir. Ct. R. 88; Carr v. Jndkins, 102 Me. 506, 67 Atl. 569; Richardson v. Fitzgerald, 132 Iowa, 253, 109 N. W. 866. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

[36] State v. McDonald, 101 Minn. 349, 112 N. W. 278. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

[37] Homnyack v. Prudential Ins. Co. of America, 194 N. Y. 456, 87 N. E. 769. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

ture intended that proceedings instituted under the old law should be carried to completion under the new.[38]

So, also, with respect to rights accrued and contracts made under and by virtue of the old statute, it will not be understood (unless the legislature plainly so wills it) that they are to be abrogated or modified by the amending act, but, on the contrary, the old law remains in force so far as necessary for their vindication and enforcement.[39] And so again, an act amending a statute which fixed the punishment for a criminal or penal offense will not affect prior convictions.[40] But it is clearly within the competence of the legislature to ordain that an amendatory act shall have a retrospective operation, saving contracts and vested rights in so far as they are protected by the constitution; and when this intention is explicitly stated or is deducible as a necessary inference from the terms of the statute, the courts must give effect to it.[41]

In cases arising subsequent to the amendment of a statute, such statute must be treated as if it had been enacted on the date of the amendment.[42] And where an amendatory act contains a provision that it shall not take effect until a future date, the old law remains in full force until the amendment goes into operation.[43]

[38] Mayne v. Board of Com'rs of Huntington, 123 Ind. 132, 24 N. E. 80; Hartmann v. Hoffman, 76 App. Div. 449, 78 N. Y. Supp. 796. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

[39] Fairchild v. United States (C. C.) 91 Fed. 297; Hathaway v. Mutual Life Ins. Co. (C. C.) 99 Fed. 534; Bullard v. Smith, 28 Mont. 387, 72 Pac. 761; Ryan v. Chicago & N. W. Ry. Co., 101 Wis. 506, 77 N. W. 894; Bowers v. Beck, 2 Nev. 157; Eddy v. Morgan, 216 Ill. 437, 75 N. E. 174. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

[40] State ex rel. Houston v. Willis, 66 Mo. 131. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

[41] Perry v. City of Denver, 27 Colo. 93, 59 Pac. 747; Lew v. Bray, 81 Conn. 213, 70 Atl. 628; Iowa Savings & Loan Ass'n v. Heidt, 107 Iowa, 297, 77 N. W. 1050, 43 L. R. A. 689, 70 Am. St. Rep. 197. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

[42] Given v. State, 160 Ind. 552, 66 N. E. 750. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

[43] Bowers v. Beck, 2 Nev. 157. *See "Statutes," Dec. Dig. (Key No.) §§ 230, 270; Cent. Dig. §§ 311, 363.*

CHAPTER XV

CONSTRUCTION OF CODES AND REVISED STATUTES

171. Liberal Construction.
172. Code Construed as a Whole.
173. Reference to Original Statutes.
174. Effect of Change of Language.
175. Adoption of Previous Judicial Construction.

LIBERAL CONSTRUCTION

171. A statutory provision that the code or body of revised laws shall be liberally construed is binding on the courts, but will not be followed in cases where such a construction would defeat a particular intention of the legislature, manifested in a particular provision, or where it would annul a specific provision of the code or revision.

In the codes and revised statutes of several of the states the legislature has incorporated a general direction that they are to be construed liberally (or according to the fair import of their terms) with a view to effect their objects and promote justice.[1] Such a provision is, of course, regarded by the courts as an imperative rule of construction for them to follow in all cases to which it is applicable;[2] and even in the absence of a legislative mandate to that effect, the principle of liberal construction would be applied to the codes of practice, since they are intended to simplify pleading and procedure and facilitate the administration of justice, and should therefore be interpreted in a manner favorable to these objects.[3] But a general rule of construc-

[1] See, for example, Pen. Code Cal. § 4; Ky. St. 1899, § 460.

[2] People v. Soto, 49 Cal. 67; Commonwealth v. Davis, 12 Bush (Ky.) 240; Commonwealth v. Avery, 14 Bush (Ky.) 625, 29 Am. Rep. 429; Hyatt v. Anderson's Trustee, 74 S. W. 1094, 25 Ky. Law Rep. 132. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[3] State ex rel. Trickel v. Superior Court of Clallam County, 52 Wash. 13, 100 Pac. 155. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

tion, thus prescribed by the legislature, has no greater sanctity or force than any substantive enactment in another part of the code, and it must be disregarded where the effect of observing it literally would be to defeat a plain and evident intention of the legislature manifested in the particular section under consideration or to annul a specific provision of the code.[4]

CODE CONSTRUED AS A WHOLE

172. The various parts and sections of a code, or of a body of revised or compiled laws, though collected from independent laws of previous enactment, are to be construed as making up one entire and harmonious system. Conflicts between them are to be avoided by construction, if possible. But if there is an irreconcilable repugnancy between different parts or sections, that which was last adopted or enacted must prevail.

Although a code or revision may be made up of many provisions drawn from various sources, though it may include the whole or parts of many previous laws and reject many others in whole or in part, though it may change or modify the existing law, or though it may add to the body of law previously in force many new provisions, yet it is to be considered as one homogeneous whole, established "uno flatu." All its various parts or sections are to be considered and interpreted as if they were parts of a single statute. And hence, according to a well-known rule, the various provisions, if apparently conflicting, must, if possible, be brought into harmony and agreement. In order to bring about this harmony and agreement, the court which is called upon to interpret the code will look through the entire work, and gather such assistance as may be af-

[4] State ex rel. Cohn v. District Court of Second Judicial Dist., 38 Mont. 119, 99 Pac. 139. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

forded by a complete survey of it.[5] In such a review, the order of time in which the various parts were originally enacted will be disregarded, if, by such a course, and looking at the work as a whole, harmony can be produced.[6] But if there is still a conflict between different parts or provisions which cannot be reconciled by any allowable use of the processes of construction, then that part or provision which was last adopted must prevail, because it is the latest expression of the legislative will.[7] "In construing the Revised Statutes," says the court in Massachusetts, "we are to bear in mind that the whole was passed at one and the same time and constitutes one act, and then the rule applies that in construing one part of a statute we are to resort to every other part, to ascertain the true meaning of the legislature in each particular provision. This rule is peculiarly applicable to the Revised Statutes, in which, for the convenience of analysis and classification of subjects, provisions are sometimes widely separated from each other in the code which have so immediate a connection with each other that it is quite necessary to consider the one in order to arrive at the true exposition of the other." [8] But where two stat-

[5] Groff v. Miller, 20 App. D. C. 353; Edwards v. Sorrell, 150 N. C. 712, 64 S. E. 898; First Nat. Bank v. Holland, 99 Va. 495, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898; City of Cincinnati v. Guckenberger, 60 Ohio St. 353, 54 N. E. 376; Congdon v. Butte Consolidated Ry. Co., 17 Mont. 481, 43 Pac. 629; Brayton v. Merithew, 56 Mich. 166, 22 N. W. 259; Weatherly v. Capital City Water Co., 115 Ala. 156, 22 South. 140. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[6] Hooper v. Creager, 84 Md. 195, 35 Atl. 967, 36 Atl. 359, 35 L. R. A. 202; Ex parte Tillman, 84 S. C. 552, 66 S. E. 1049, 26 L. R. A. (N. S.) 781. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[7] Gibbons v. Brittenum, 56 Miss. 232; State ex rel. Attorney General v. Heidorn, 74 Mo. 410; Mobile & O. R. Co. v. Malone, 46 Ala. 391; Ashley v. Harrington, 1 D. Chip. (Vt.) 348; State ex rel. Village of Excelsior v. District Court of Hennepin County, 107 Minn. 437, 120 N. W. 894; Gaines' Adm'r v. Marye, 94 Va. 225, 26 S. E. 511; Hillsborough County Com'rs v. Jackson, 58 Fla. 210, 50 South. 423. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[8] Commonwealth v. Goding, 3 Metc. (Mass.) 130. See, also, Bryant v. Livermore, 20 Minn. 313 (Gil. 271); Ex parte Ray, 45 Ala. 15;

utes, passed at different times, both relating to the same subject-matter, but inconsistent with each other, are both incorporated into a code or revision, the court will inquire as to the dates of their respective enactments, and will give effect to that which is last in point of time, rejecting the other.[9] And in case of a conflict between the two parts or provisions which is not so radical as to require that one or the other shall be absolutely disregarded, the court will endeavor so to modify the earlier provision as to bring it into harmony and consistency with the later. But any one who contends that an article or section of the code is void for repugnancy to some other must assume the burden of showing the repugnancy beyond all doubt, and also that the law so abrogated is older in date than the repealing statute.[10]

In some states, where the entire body of law has been codified, a modification of the general rule above stated is introduced by a direction that if the provisions of any title of the code are found to be in conflict with another title, the provisions of each title must prevail as to all matters arising out of the subject-matter of that title.[11] Further it is to be noted that an act passed after the adoption of the code is not to be construed as if it were an integral part of it, though it may be compared, for purposes of interpretation, with such parts of the code as may be in pari materia. This rule was applied in Alabama to an act passed in 1897, after the statute of adoption of the Code of 1896, but which was incorporated into the Code, as published, by the codifier.[12]

Gallegos v. Pino, 1 N. M. 410. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[9] Mobile Savings Bank v. Patty (D. C.) 16 Fed. 751; Haritwen v. The Louis Olsen (D. C.) 52 Fed. 652; Hamilton v. Buxton, 6 Ark. 24; State ex rel. Village of Excelsior v. District Court of Hennepin County, 107 Minn. 437, 120 N. W. 894. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[10] Gee v. Thompson, 11 La. Ann. 657. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[11] State v. Campbell, 3 Cal. App. 602, 86 Pac. 840, construing Pol. Code Cal., § 4481. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[12] Rayford v. Faulk, 154 Ala. 285, 45 South. 714. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

The rule which requires a collected and systematised body of laws to be construed as a whole, and as if it were one single and comprehensive enactment, does not at all depend on the name which may be given to the collection. The "Compiled Laws" of a state may be subject to the rule, as well as a "code" or "revision," properly so called, if it is really a collection of previously existing laws brought into harmony with each other, arranged systematically, and re-enacted as a whole.[13]

REFERENCE TO ORIGINAL STATUTES

173. The provisions of a code or revision are primarily to be interpreted in and by themselves alone; reference to the originals of the statutes embodied in the code is justifiable only on special grounds, as where the provisions of the code are of doubtful import, or are susceptible of more than one construction, or where language is used which had previously acquired a technical meaning.[14]

[13] A body of "compiled statutes" or "compiled laws" is a collection of the statutes existing and in force in a given state, all laws and parts of laws relating to each subject-matter being brought together under one head, and the whole arranged systematically in one book, either under an alphabetical arrangement or some other plan of classification. Properly speaking, such a collection of statutes differs from a "code" in this: That none of the laws so compiled derives any new force or undergoes any modification in its relation to other statutes in pari materia from the fact of the compilation, while a code is a re-enactment of the whole body of the positive law, and is to be read and interpreted as one entire and homogeneous whole. See Central of Georgia Ry. Co. v. State, 104 Ga. 831, 31 S. E. 531, 42 L. R. A. 518. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[14] Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1, 15 Sup. Ct. 508, 39 L. Ed. 601; Meyer v. Western Car Co., 102 U. S. 1, 26 L. Ed. 59; Viterbo v. Friedlander, 120 U. S. 707, 7 Sup. Ct. 962, 30 L. Ed. 776; Thomas v. United States, 156 Fed. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720; United States v. North American Commercial Co. (C. C.) 74 Fed. 145; Comer v. State, 103 Ga. 69, 29 S. E. 501; Pratt v. Street Com'rs, 139 Mass. 559, 2 N. E. 675; State v. Stroschein, 99 Minn. 248, 109 N. W. 235; Braun v. State, 40 Tex. Cr. R. 236, 49

On this point, in a recent English case, Lord Bramwell is reported as having used the following language: "I think the proper course is in the first instance to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it the law should be ascertained by interpreting the language used, instead of, as before, roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course far from asserting that resort may never be had to the previous state of the law, for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or again, if, in a code of the law of negotiable instruments, words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, the same interpretation might well be put upon them in the code. I give these as examples merely; they of course do not exhaust the category. What, however, I am venturing to insist upon is that the first step taken should be to interpret the

S. W. 620; Gaines' Adm'r v. Marye, 94 Va. 225, 26 S. E. 511. The rule has been otherwise expressed by saying that, in the construction of a code or revision, the courts cannot refer to the antecedent legislation embodied therein for the purpose of creating a doubt, but they may for the purpose of solving one. Merchants' Nat. Bank of Baltimore v. United States, 42 Ct. Cl. 6. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

language of the statute, and that an appeal to earlier decisions can only be justified on some special ground." [15] To the same effect is the following language of the Supreme Court of Massachusetts: "Where the language of the Public Statutes is distinct, clear, and admits of but one possible interpretation, it must be followed, although it assumes the law to have been as we should not have held it, and although we are not able to ascertain, from the reports of the legislature, its committees, or otherwise, that there was any intention to amend or change it. Where the law as expressed in the public statutes is ambiguous or doubtful, or susceptible of two constructions, it is then most proper to examine the statutes as they previously existed, in order that it may be construed in the light afforded by them." [16] So, also, according to the court in Ohio: "Where the language used in a revised statute is of such doubtful import as to call for a construction, it is both reasonable and usual to refer to the statute or statutes from which the revision has been made. But where the language is plain, and leads to no absurd or improbable results, there is no room for construction, and it is the duty of the courts to give it the effect required by the plain and ordinary signification of the words used, whatever may have been the language of the prior statute or the construction placed upon it. If the plain language of a revised statute is to be departed from, whenever the language of the prior one may require it, then it may be asked, what is gained by a revision? The definition of crimes must, in such case, be sought, not in the statutes as they are found to exist, but in the language of those that have been repealed. The more rational rule must be, as we think, to resort to the prior statute for the purpose of removing doubts, not for the purpose of raising them." [17]

The same rule is applied to the construction of the Re-

[15] Bank of England v. Vagliano (1891) App. Cas. 107, 144. And see, also, Robinson v. Canadian Pac. Ry. Co. (1892) App. Cas. 481. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[16] Pratt v. Street Com'rs, 139 Mass. 559, 2 N. E. 675. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[17] Heck v. State, 44 Ohio St. 536, 9 N. E. 305. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

vised Statutes of the United States. The body of law thus named must be accepted as the law on the subjects which it embraces, as it existed at the date of the enactment, December 1, 1873. When the meaning of any part or section of the Revised Statutes is plain and clear, the courts cannot recur to the original acts of Congress to see if errors were committed in revising them or to obtain light as to their proper interpretation; but such recourse to the original statutes may be had when it becomes necessary in order to put a construction upon obscure, doubtful, or ambiguous language used in the revision.[18]

Where, in the revision of statutes, by incorporating several former acts into one, the natural construction of the words would give a meaning clearly at variance with the law, the true construction may be arrived at by giving such words the meaning in which they were used in the old statute.[19] In Alabama, a statute authorizing the codification of the laws of the state into one revised code provided that there should be no change in "the substance or meaning of any statute to be included therein." It also directed that marginal references to the session acts should be inserted. The evident design of the latter provision was that the sections of the code should be compared with the original acts, when necessary, and that the marginal notes should pro-

[18] United States v. Bowen, 100 U. S. 508, 25 L. Ed. 631; Arthur v. Dodge, 101 U. S. 34, 25 L. Ed. 948; Vietor v. Arthur, 104 U. S. 498, 26 L. Ed. 633; Deffeback v. Hawke, 115 U. S. 392, 6 Sup. Ct. 95, 29 L. Ed. 423; Cambria Iron Co. v. Ashburn, 118 U. S. 54, 6 Sup. Ct. 929, 30 L. Ed. 60; United States v. Lacher, 134 U. S. 624, 10 Sup. Ct. 625, 33 L. Ed. 1080; Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1, 15 Sup. Ct. 508, 39 L. Ed. 601; Wright v. United States, 15 Ct. Cl. 80; People's United States Bank v. Goodwin (C. C.) 162 Fed. 937; Schmidt v. United States, 133 Fed. 257, 66 C. C. A. 389; Merchants' Nat. Bank of Baltimore v. United States, 42 Ct. Cl. 6. Where it is found that an act of Congress which is an independent statute, permanent in character, though special in its application, and not repealed by any act prior to the revision of the statutes, has been omitted from the Revised Statutes, it nevertheless continues in force. Peters v. United States, 2 Okl. 116, 33 Pac. 1031. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[19] In re Murphy, 23 N. J. Law, 180. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

mote facility of reference for such purposes. It was accordingly held that when any section of the code is found to differ, in meaning or substance, from the statute which purports to be incorporated therein, the original statute is the law and must govern.[20]

If the compilers of a code failed to bring in certain provisions of a statute, the rest of which they incorporated, the courts, in construing the statute as it stands in the code, may have recourse to the original statute for aid in the construction, though, of course, they cannot bring forward into the code the omitted provisions of the act.[21]

EFFECT OF CHANGE OF LANGUAGE

174. When statutes are codified, compiled, or collected and revised, a mere change of phraseology should not be deemed to work a change in the law, unless there was an evident intention, on the part of the legislature, to effect such change.[22]

"It is a well-settled rule," says the court in Ohio, "that in the revision of statutes, neither an alteration in phraseology nor the omission or addition of words, in the latter statute, shall be held, necessarily, to alter the construction of the former act. And the court is only warranted in holding the construction of a statute, when revised, to be changed,

[20] Nicholson v. Mobile & M. R. Co., 49 Ala. 205. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[21] Runnels v. State, 45 Tex. Cr. R. 446, 77 S. W. 458. *See "Statutes," Dec. Dig. (Key No.) § 231; Cent. Dig. § 312.*

[22] McDonald v. Hovey, 110 U. S. 619, 4 Sup. Ct. 142, 28 L. Ed. 269; The E. W. Gorgas, 10 Ben. 460, Fed. Cas. No. 4,585; Hughes v. Farrar, 45 Me. 72; Conger v. Barker's Adm'r, 11 Ohio St. 1; Burnham v. Stevens, 33 N. H. 247; Overfield v. Sutton, 1 Metc. (Ky.) 621; Douglass v. Howland, 24 Wend. (N. Y.) 35, 47; Case of Yates, 4 Johns. (N. Y.) 317, 359; Ennis v. Crump, 6 Tex. 34; Becklin v. Becklin, 99 Minn. 307, 109 N. W. 243; Strottman v. St. Louis, I. M. & S. R. Co., 211 Mo. 227, 109 S. W. 769; Stearns v. Graham, 83 Vt. 111, 74 Atl. 486; Brown v. Randolph County Court, 45 W. Va. 827, 32 S. E. 165. *See "Statutes," Dec. Dig. (Key No.) §§ 147, 231; Cent. Dig. §§ 216, 312.*

where the intent of the legislature to make such change is clear, or the language used in the new act plainly requires such change of construction." [23] It should be remembered that condensation is a necessity in the work of compilation or codification. Very frequently words which do not materially affect the sense will be omitted from the statutes as incorporated in the code, or the same general idea will be expressed in briefer phrases. No design of altering the law itself could rightly be predicated upon such modifications of the language. And again, in the construction of such a body of laws, "the manifest purpose to express in general words the substance of former statutes must be borne in mind; and from the omission of special words found in former statutes, embraced by the general words, an intention to change the former statutes will not be implied." [24] When the language of the code or revision, as it stands, would lead to absurd or highly improbable results, it may be compared with the language of the original statute, to ascertain if the phraseology has not been changed by mistake or inadvertence. Thus, in Louisiana, a section of the Revised Statutes provides that all crimes, offenses, and misdemeanors shall be construed according to the common law of England. This was intended to be a reproduction of an act of 1805, which named and described certain crimes, and then provided that the offenses "hereinbefore named" should be construed according to the common law. It was held that the omission, in the Revised Statutes, of the words "hereinbefore named" was not intended to extend or alter the meaning of the provision so as to embrace all crimes and misdemeanors, however obscure or obsolete, known to the common law of England, but that such omission was an oversight.[25] But while the presumption is against an intention to change the law, yet when the language used in the revision cannot possibly bear the same

[23] Conger v. Barker's Adm'r, 11 Ohio St. 1. *See "Statutes," Dec. Dig. (Key No.) §§ 147, 231; Cent. Dig. §§ 216, 312.*

[24] Posey v. Pressley, 60 Ala. 243. *See "Statutes," Dec. Dig. (Key No.) §§ 147, 231; Cent. Dig. §§ 216, 312.*

[25] State v. Gaster, 45 La. Ann. 636, 12 South. 739. *See "Statutes," Dec. Dig. (Key No.) §§ 147, 231; Cent. Dig. §§ 216, 312.*

construction as the revised and repealed act, full effect must be given to the new enactment.[26]

ADOPTION OF PREVIOUS JUDICIAL CONSTRUCTION

175. When the legislature revises the statutes of the state, after a particular statute has been judicially construed, without changing that statute, it is presumed that the legislature intended that the same construction should continue to be applied to that statute.[27]

This rule is strictly analogous to that presently to be noticed, that when a statute or a constitutional provision is adopted from the legislation or the constitution of another state, which has there received a settled judicial construction, it is presumed to be adopted in view of that construction, which is thereby sanctioned and intended to be continued in force; and also to the rule which produces a like consequence when a statute of the same state is re-enacted.[28] In either case, the interpretation of the law becomes a part of the law; and in the instance of a revision or codification of the statutes, it would require an unmistakable alteration of the language employed to indicate an intention, on the part of the legislature, that a different construction should thereafter be put upon it.

[26] The Brothers, 10 Ben. 400, Fed. Cas. No. 1,968; State ex rel. Porter v. Ritchie, 32 Utah, 381, 91 Pac. 24; McNeely v. State, 50 Tex. Cr. R. 279, 96 S. W. 1083. *See "Statutes," Dec. Dig. (Key No.) §§ 147, 231; Cent. Dig. §§ 216, 312.*

[27] Posey v. Pressley, 60 Ala. 243; Anthony v. State, 29 Ala. 27; Duramus v. Harrison, 26 Ala. 326; State Commission in Lunacy v. Welch, 154 Cal. 775, 99 Pac. 181; Evans v. State ex rel. Freeman, 165 Ind. 369, 75 N. E. 651, 2 L. R. A. (N. S.) 619; Shelton v. Sears, 187 Mass. 455, 73 N. E. 666; Hoy v. Hoy, 93 Miss. 732, 48 South. 903, 25 L. R. A. (N. S.) 182; Gulf, C. & S. F. Ry. Co. v. Ft. Worth & N. O. Ry. Co., 68 Tex. 98, 3 S. W. 564; Smith v. Smith, 19 Wis. 522; Scheftels v. Tabert, 46 Wis. 439, 1 N. W. 156. *See "Statutes," Dec. Dig. (Key No.) §§ 225¾, 231; Cent. Dig. §§ 306, 312.*

[28] See infra, chapter XVI. *See "Statutes," Dec. Dig. (Key No.) §§ 225¾, 231; Cent. Dig. §§ 306, 312.*

CHAPTER XVI

ADOPTED AND RE-ENACTED STATUTES

176. Statutes Adopted from Other States.
177. State Laws Extended to Territories.
178. British Statutes.
179. Re-enacted Statutes.

STATUTES ADOPTED FROM OTHER STATES

176. Where a statute of a foreign jurisdiction, which had there received a settled judicial construction, is adopted, wholly or in part, and enacted as a law of the state adopting it, it is presumed that the construction previously put upon it is adopted with it, and it should be interpreted according to such construction. This rule is likewise applicable to single words or phrases borrowed from another enactment.

If the legislature of a state, in enacting a statute, literally or substantially copies the language of a statute previously existing in another state, or borrows from such statute a provision, clause, or phrase, the same having received a settled judicial interpretation in the state of its origin, it is presumed that the enactment was made with knowledge of such interpretation, and that it was the design of the legislature that the act should be understood and applied according to that interpretation.[1]

[1] *United States.* Metropolitan R. Co. v. Moore, 121 U. S. 558, 7 Sup. Ct. 1334, 30 L. Ed. 1022; Stutsman County v. Wallace, 142 U. S. 293, 12 Sup. Ct. 227, 35 L. Ed. 1018; Jennings v. Alaska Treadwell Gold Min. Co., 170 Fed. 146, 95 C. C. A. 388; Harrill v. Davis, 168 Fed. 187, 94 C. C. A. 47, 22 L. R. A. (N. S.) 1153; Welsh v. Barber Asphalt Pav. Co., 167 Fed. 465, 93 C. C. A. 101; Boise City Artesian Hot & Cold Water Co. v. Boise City, Idaho, 123 Fed. 232, 59 C. C. A. 236; Blaylock v. Incorporated Town of Muskogee, 117 Fed. 125, 54 C. C. A. 639; Swofford Bros. Dry Goods Co. v. Mills (C. C.) 86 Fed. 556; Coulter v. Stafford (C. C.) 48 Fed. 266. *Arizona.* Goldman v.

But, while this rule is well settled and has been recognized in a great number of cases, it is subject to important limitations. It rests altogether on the presumption that the legislature, in deliberating upon the adoption of the stat-

Sotelo, 8 Ariz. 85, 68 Pac. 558; Santa Cruz County v. Barnes, 9 Ariz. 42, 76 Pac. 621; Anderson v. Territory, 9 Ariz. 50, 76 Pac. 636; Costello v. Muheim, 9 Ariz. 422, 84 Pac. 906; Territory v. Copper Queen Consol. Min. Co. (Ariz.) 108 Pac. 960. *Arkansas.* McNutt v. McNutt, 78 Ark. 346, 95 S. W. 778. *Colorado.* United States Fidelity & Guaranty Co. v. People, 44 Colo. 557, 98 Pac. 828; In re Shapter's Estate, 35 Colo. 578, 85 Pac. 688, 6 L. R. A. (N. S.) 575, 117 Am. St. Rep. 216; McGovney v. Gwillim, 16 Colo. App. 284, 65 Pac. 346; Gilman v. Matthews, 20 Colo. App. 170, 77 Pac. 366. *Florida.* Atlantic Coast Line R. Co. v. Beazley, 54 Fla. 311, 45 South. 761; Duval v. Hunt, 34 Fla. 85, 15 South. 876. *Idaho.* Stein v. Morrison, 9 Idaho, 426, 75 Pac. 246. *Illinois.* Freese v. Tripp, 70 Ill. 496; Rigg v. Wilton, 13 Ill. 15, 54 Am. Dec. 419; Fisher v. Deering, 60 Ill. 114; Campbell v. Quinlin, 4 Ill. 288; Requa v. Graham, 86 Ill. App. 566; Wanamaker v. Poorbaugh, 91 Ill. App. 560; People v. Griffith, 245 Ill. 532, 92 N. E. 313. *Indian Territory.* J. B. Bostic Co. v. Eggleston, 7 Ind. T. 134, 104 S. W. 566; McFadden v. Blocker, 2 Ind. T. 260, 48 S. W. 1043, 58 L. R. A. 878; Robinson v. Belt, 2 Ind. T. 360, 51 S. W. 975. *Indiana.* City of Laporte v. Gamewell Fire Alarm Tel. Co., 146 Ind. 466, 45 N. E. 588, 35 L. R. A. 686, 58 Am. St. Rep. 359; Clark v. Jeffersonville M. & I. R. Co., 44 Ind. 248; Fall v. Hazelrigg, 45 Ind. 576, 15 Am. Rep. 278. *Kansas.* Nelson v. Stull, 65 Kan. 585, 68 Pac. 617; Bemis v. Becker, 1 Kan. 226; Atchison, T. & S. F. R. Co. v. Franklin, 23 Kan. 74. *Michigan.* Besser v. Alpena Circuit Judge, 155 Mich. 631, 119 N. W. 902; State v. Holmes, 115 Mich. 456, 73 N. W. 548; Stellwagen v. Durfee, 130 Mich. 166, 89 N. W. 728; Drennan v. People, 10 Mich. 169; Harrison v. Sager, 27 Mich. 476; Greiner v. Klein, 28 Mich. 12; Daniels v. Clegg, 28 Mich. 32; Shaw v. Hoffman, 25 Mich. 162. *Minnesota.* Nicollet Nat. Bank v. City Bank, 38 Minn. 85, 35 N. W. 577, 8 Am. St. Rep. 643. *Missouri.* Chillicothe & B. R. Co. v. City of Brunswick, 44 Mo. 553; State ex rel. Missouri & M. R. Co. v. Macon County Court, 41 Mo. 453; State ex rel. Guion v. Miles, 210 Mo. 127, 109 S. W. 595; Knight v. Rawlings, 205 Mo. 412, 104 S. W. 38, 13 L. R. A. (N. S.) 212; State v. Chandler, 132 Mo. 155, 33 S. W. 797, 53 Am. St. Rep. 483; Stephan v. Metzger, 95 Mo. App. 609, 69 S. W. 625; St. Louis Nat. Bank v. Hoffman, 74 Mo. App. 203. *Montana.* Lindley v. Davis, 6 Mont. 453, 12 Pac. 118; State Sav. Bank v. Albertson, 39 Mont. 414, 102 Pac. 692; Ex parte Wisner, 36 Mont. 298, 92 Pac. 958; Butte & B. Consolidated Min. Co. v. Montana Ore-Purchasing Co., 25 Mont. 41, 63 Pac. 825; Largey v. Chapman, 18 Mont. 563, 46 Pac. 808. *Nebraska.* Forrester v. Kearney Nat. Bank, 49 Neb. 655, 68 N. W. 1059; Gentry

ute, had before it not only the terms of the law itself, but also the judicial decisions in which it had been interpreted, and, moreover, it must be supported by a presumption that such interpretation was regarded by the legislature as definite, clear, and established. If the statute was of ancient date, and its meaning had been settled by a long and uniform course of decisions in the state from which it was taken, these presumptions would have great weight and would be practically conclusive. But it would be otherwise if the law in question had been only recently adopted and had been construed in perhaps only a single decision. In other words, while there is always a presumption that the legislature, in adopting a statute of another state, intended to adopt also its judicial interpretation, yet the force of this presumption must always depend on the extent to which the terms of the statute have acquired a settled meaning and a definite application at the time of its adoption in the courts of the jurisdiction from which it is taken.[2] Fur-

v. Bearss, 82 Neb. 787, 118 N. W. 1077; Goble v. Simeral, 67 Neb. 276, 93 N. W. 235; Coffield v. State, 44 Neb. 417, 62 N. W. 875. *Nevada.* State v. Robey, 8 Nev. 312. *New Jersey.* Rutkowsky v. Bozza, 77 N. J. Law, 724, 73 Atl. 502. *New Mexico.* Reymond v. Newcomb. 10 N. M. 151, 61 Pac. 205. *North Dakota.* Cass County v. Security Imp. Co., 7 N. D. 528, 75 N. W. 775; State v. Blaisdell (N. D.) 119 N. W. 360. *Oklahoma.* United States v. Choctaw, O. & G. R. Co., 3 Okl. 404, 41 Pac. 729; Hixon v. Hubbell, 4 Okl. 224, 44 Pac. 222; Chisolm v. Weisse, 2 Okl. 611, 39 Pac. 467. *Oregon.* Jamieson v. Potts (Or.) 105 Pac. 93; Abraham v. City of Roseburg (Or.) 105 Pac. 401; Everding v. McGinn, 23 Or. 15, 35 Pac. 178. *South Dakota.* Yankton Sav. Bank v. Gutterson, 15 S. D. 486, 90 N. W. 144; Carlson v. Stuart, 22 S. D. 560, 119 N. W. 41; Murphy v. Nelson, 19 S. D. 197, 102 N. W. 691. *Texas.* City of Tyler v. St. Louis Southwestern Ry. Co., 99 Tex. 491, 91 S. W. 1; Ollre v. State, 57 Tex. Cr. R. 520, 123 S. W. 1116. *Virginia.* Chesapeake & O. R. Co. v. Pew, 109 Va. 288, 64 S. E. 35. *Washington.* In re City of Seattle, 49 Wash. 109, 94 Pac. 1075. *Wisconsin.* Manitowoc Clay Product Co. v. Manitowoc, G. B. & N. W. R. Co., 135 Wis. 94, 115 N. W. 390; Pomeroy v. Pomeroy, 93 Wis. 262, 67 N. W. 430; State ex rel. Rogers v. Wheeler, 97 Wis. 96, 72 N. W. 225; Westcott v. Miller, 42 Wis. 454; Kilkelly v. State, 43 Wis. 604; Draper v. Emerson, 22 Wis. 147. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[2] Pratt v. Miller, 109 Mo. 78, 18 S. W. 965, 32 Am. St. Rep. 656; Smith v. Baker, 5 Okl. 326, 49 Pac. 61. And see Morgan v. State,

ther, a construction of the statute will not be regarded as settled, within the meaning of this rule, or in such sense that the legislature must be presumed to have adopted it, unless it is established by the decisions of the court of last resort in the state from which it comes; the decisions of the inferior courts, subject to review, cannot have this effect.[3] And the interpretation, to be thus considered as adopted with the statute, must have been made before the adoption. Afterwards, decisions rendered in the state from which the law was taken may be entitled to respectful consideration, but they are in no sense authoritative.[4] Even as to prior decisions, the rule does not seem to be inflexible. There are decisions to the effect that the construction put upon the statute in the state from which it was taken may be rejected where it appears to conflict with the obvious meaning of the statute, or where the decision in which the construction was settled is unsatisfactory in reasoning, opposed to the weight of authority, or stands alone and has never been followed.[5] And again, if a foreign construction is thus adopted, it is the settled interpretation of the statute as fixed by the authoritative deliverances of the courts,

51 Neb. 672, 71 N. W. 788. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[3] Von Bremen, MacMonnies & Co. v. United States, 168 Fed. 889, 94 C. C. A. 301; Smith v. Baker, 5 Okl. 326, 49 Pac. 61; Osborne v. Home Life Ins. Co., 123 Cal. 610, 56 Pac. 616. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[4] Stutsman County v. Wallace, 142 U. S. 293, 12 Sup. Ct. 227, 35 L. Ed. 1018; Myers v. McGavock, 39 Neb. 843, 58 N. W. 522, 42 Am. St. Rep. 627; Northcutt v. Eager, 132 Mo. 265, 33 S. W. 1125; Elias v. Territory, 9 Ariz. 1, 76 Pac. 605; Germania Life Ins. Co. v. Ross-Lewin, 24 Colo. 43, 51 Pac. 488, 65 Am. St. Rep. 215; Barnes v. Lynch, 9 Okl. 11, 59 Pac. 995; Wyoming Coal Min. Co. v. State ex rel. Kennedy, 15 Wyo. 97, 87 Pac. 984, 123 Am. St. Rep. 1014. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[5] Whitney v. Fox, 166 U. S. 637, 17 Sup. Ct. 713, 41 L. Ed. 1145; Ancient Order of Hibernians, Division No. 1, of Anaconda v. Sparrow, 29 Mont. 132, 74 Pac. 197, 64 L. R. A. 128, 101 Am. St. Rep. 563; Rhea v. State, 63 Neb. 461, 88 N. W. 789; Stadler v. First Nat. Bank, 22 Mont. 190, 56 Pac. 111, 74 Am. St. Rep. 582. But see Preston Nat. Bank v. Brooke, 142 Mich. 272, 105 N. W. 757, holding that, before this rule of construction will be departed from, the court must find some more potent reason than its own conviction of the unwisdom

and not a practical construction put upon it by executive or administrative officers.[6]

The fact that the statute under consideration was adopted from the legislation of another state may probably be proved by external evidence, such as reports of legislative committees and the debates of the legislature on its passage, but internal evidence is generally sufficient for this purpose. The fact that a statute is almost a literal copy of the statute of another state on the same subject, not only in substance, but also in its arrangement in sections, is strong evidence that it was copied from that other state.[7] But it is not necessary to the application of the rule that the whole of the statute should have been copied, or that any part of it should have been literally transcribed; it is only essential that the substance of the statute, or some particular section, provision, phrase, or controlling word should have been transcribed and adopted.[8] On the other hand, a material change of phraseology, such as to create an essential difference between the two statutes and necessitate a different construction, shows that the legislature did not intend to adopt the interpretation prevailing in the other state,[9] though a mere change of punctuation, not al-

of the statute as construed by the courts of the state from which it is taken. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[6] Gray's Lessee v. Askew, 3 Ohio, 466. But see Bailey Loan Co. v. Seward, 9 S. D. 326, 69 N. W. 58, as to following the construction put upon a particular provision of a statute by the commissioners who drafted it as a part of a proposed civil code for New York (never adopted in that state), and copied into the legislation of South Dakota. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[7] Mann v. State Treasurer, 74 N. H. 345, 68 Atl. 130, 15 L. R. A. (N. S.) 150. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[8] State ex rel. Guion v. Miles, 210 Mo. 127, 109 S. W. 595. Where a legislature adopts in substance a statute of another state, but omits a proviso attached to that statute, the statute as adopted will be construed as excluding the matter in the proviso. Howells Min. Co. v. Grey, 148 Ala. 535, 42 South. 448. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[9] Copper Queen Consol. Min. Co. v. Territorial Board of Equalization, 9 Ariz. 383, 84 Pac. 511 (affirmed 206 U. S. 474, 27 Sup. Ct.

tering the sense, will not have this effect.[10] The rule, however, will be strictly confined to questions of interpretation growing out of the very words of the statute. As to matters which are collateral to the statute, or which present questions of general law, though they may in some sense grow out of the statute or depend upon it, the decisions of the other state are not at all controlling.[11]

If the original construction of the adopted statute is not in harmony with the spirit and policy of the laws of the state adopting it, or would make it conflict with existing laws of that state or with the settled practice under them, it will not be followed, but the courts will work out a construction for themselves.[12] For example, a certain section of the Nevada insolvent act, denying to depositaries of public funds, and to other persons of a fiduciary character, the benefit of the act, was adopted from the insolvent law of California, where it had previously been construed as deny-

695, 51 L. Ed. 1143); Kirman v. Powning, 25 Nev. 378, 61 Pac. 1090. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[10] Griffiths v. Montandon, 4 Idaho, 377, 39 Pac. 548. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[11] Bliss v. Caille Bros. Co., 149 Mich. 601, 113 N. W. 317; Western Inv. Co. v. Davis, 7 Ind. T. 152, 104 S. W. 573. And see In re McKennan's Estate (S. D.) 126 N. W. 611, holding that the courts of one state are not bound by the constitutional construction placed upon a statute by the courts of another state, from which the statute was taken, even though the constitutions are the same. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[12] Copper Queen Consol. Min. Co. v. Territorial Board of Equalization, 206 U. S. 474, 27 Sup. Ct. 695, 51 L. Ed. 1143; Jamison v. Burton, 43 Iowa, 282; Gage v. Smith, 79 Ill. 219; McCutcheon v. People, 69 Ill. 601; Cole v. People, 84 Ill. 216; Rhoads v. Chicago & A. R. Co., 227 Ill. 328, 81 N. E. 371, 11 L. R. A. (N. S.) 623; Florida Cent. & P. R. Co. v. Mooney, 40 Fla. 17, 24 South. 148; Atlantic Coast Line R. Co. v. Beazley, 54 Fla. 311, 45 South. 761; F. M. Davis Ironworks Co. v. White, 31 Colo. 82, 71 Pac. 384; Bowers v. Smith, 111 Mo. 45, 20 S. W. 101, 16 L. R. A. 754, 33 Am. St. Rep. 491; Oleson v. Wilson, 20 Mont. 544, 52 Pac. 372, 63 Am. St. Rep. 639; Smith v. Dayton Coal & Iron Co., 115 Tenn. 543, 92 S. W. 62, 4 L. R. A. (N. S.) 1180; Dixon v. Ricketts, 26 Utah, 215, 72 Pac. 947; State v. Mortensen, 26 Utah, 312, 73 Pac. 562; Coad v. Cowhick, 9 Wyo. 316, 63 Pac. 584, 87 Am. St. Rep. 953. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

ing to the insolvency court jurisdiction over insolvents of the class therein specified. The California construction was based on the policy of its laws, which was to procure the discharge of insolvent debtors. But the main purpose of the Nevada insolvency law was the ratable distribution of the insolvent's property among his creditors, and hence the reason for the California construction of that section did not exist in Nevada. It was therefore held that the adoption of the statute was not an adoption of this construction, and the court was not thereby denied jurisdiction over insolvents of the class named.[13] And the rule that the judicial construction given to a statute in the state of its origin follows it into the state of its adoption cannot prevail against an express provision in the statute indicating a different legislative intent.[14]

Finally, if it appears (as is now frequently the case) that the statute under consideration is not peculiar to the state from which it is alleged to have been taken, but that another state or several other states have identical or substantially similar statutes on their books, the endeavor should be made to ascertain which particular state was the parent of the statute as adopted by the state where it is in controversy. If this can be settled with certainty, the construction worked out in that parent state will ordinarily be followed in the adopting state.[15] But the fact that the law, as passed, is nearly identical with the corresponding statute of a certain other state is not conclusive on this point where it is also shown that one or more other states have enacted substantially similar statutes.[16] And where this is the case, and the decisions in the various states hav-

[13] Frankel v. Creditors, 20 Nev. 49, 14 Pac. 775. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[14] Missouri Pac. Ry. Co. v. State, 69 Kan. 552, 77 Pac. 286. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[15] Burnside v. Wand, 170 Mo. 531, 71 S. W. 337, 62 L. R. A. 427; State ex rel. Attorney General v. Portage City Water Co., 107 Wis. 441, 83 N. W. 697. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[16] Texas & P. Ry. Co. v. Humble, 181 U. S. 57, 21 Sup. Ct. 526, 45 L. Ed. 747. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

ing substantially the same statute are inharmonious and conflicting, so far as concerns its interpretation, the courts in the state which has adopted it will not feel constrained to follow the decisions of the state from which it was more immediately taken, but may decide the controverted point according to reason and the weight of authority.[17] Where the legislature of a new state enacts an entire body of laws at one time, and it appears that different portions of them were adopted without material alteration from the statutes of several different states, and that various portions of the body of law so enacted are not entirely consistent with each other, it is the duty of the courts to endeavor to reconcile them wherever it is possible to do so, in order that the legislative intent may be as far as possible effective.[18]

STATE LAWS EXTENDED TO TERRITORIES

177. When Congress, in organizing a territory, adopts for it the laws of a particular state, or declares that those laws shall be operative in the territory, it adopts also the judicial construction previously put upon them in the state of their origin; and the decisions of the Supreme Court of that state, construing such laws, will be followed by both the territorial courts and the United States courts sitting in the territory.[19]

[17] State v. Campbell, 73 Kan. 688, 85 Pac. 784, 9 L. R. A. (N. S.) 533. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[18] Durham v. Linderman, 10 Okl. 570, 64 Pac. 15. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[19] Robinson v. Belt, 187 U. S. 41, 23 Sup. Ct. 16, 47 L. Ed. 65; Sanger v. Flow, 48 Fed. 152, 1 C. C. A. 56; Fish v. Hemple, 2 Alaska, 175; Snellen v. Kansas City Southern Ry Co., 82 Ark. 334, 102 S. W. 193; Blaylock v. Town of Muskogee, 4 Ind. T. 43, 64 S. W. 609; McFadden v. Blocker, 3 Ind. T. 224, 54 S. W. 873, 58 L. R. A. 894; Carter v. Barton, 2 Ind. T. 99, 48 S. W. 1017; Boyt v. Mitchell, 4 Ind. T. 47, 64 S. W. 610; Zufall v. United States, 1 Ind. T. 638, 43 S. W. 760; Le Bosquet v. Myers, 7 Ind. T. 75, 103 S. W. 770; Western Inv. Co. v. Davis, 7 Ind. T. 152, 104 S. W. 573; State ex rel. Sims v. Caruthers, 1 Okl. Cr. 428, 98 Pac. 474; National Live Stock Commis-

The decisions cited will show that this is the rule applied in the courts in the Indian Territory (and in Oklahoma before its admission as a state), under the act of Congress which adopted the laws of the state of Arkansas and extended them over that territory,[20] and also under the act of Congress providing a civil government for Alaska, which declared that the general laws of the state of Oregon then in force should be the law in the "district of Alaska, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States." [21] Such is also the rule for the construction of the Code of the District of Columbia, in so far as different provisions of it were adopted by Congress from the legislation of various states.[22] From the application of the general rule above stated there is but a single and feeble dissent.[23]

BRITISH STATUTES

178. A British statute adopted, in whole or in part, by an American legislature is presumed to have been adopted with knowledge of the settled judicial construction put upon it by the courts in England, and the interpretation of its words, phrases, and provisions should be in accordance therewith.

sion Co. v. Taliaferro, 20 Okl. 177, 93 Pac. 983; Red River Nat. Bank v. De Berry, 47 Tex. Civ. App. 96, 105 S. W. 998; Hawkins v. United States, 3 Okl. Cr. 651, 108 Pac. 561. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[20] Act Cong. May 2, 1890, c. 182, § 31, 26 Stat. 94.

[21] Act Cong. May 17, 1884, c. 53, § 7, 23 Stat. 24. But some parts of the Civil Code of Alaska, as it now stands, were adopted by Congress from other states; for example, section 257 from the laws of Texas. The rule of construction, however, is the same. The interpretation put upon each provision in the state of its origin follows it into Alaska. Fish v. Hemple, 2 Alaska, 175. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[22] Capital Traction Co. v. Hof, 174 U. S. 1, 19 Sup. Ct. 580, 43 L. Ed. 873; Willis v. Eastern Trust & Banking Co., 169 U. S. 295, 18 Sup. Ct. 347, 42 L. Ed. 752; Strasburger v. Dodge, 12 App. D. C. 37. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[23] Kohn v. McKinnon (D. C.) 90 Fed. 623. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

On the same general principle set forth in the preceding sections, when Congress or a state legislature adopts a British statute (such, for example, as the statute of frauds), it is presumed to be adopted with reference to the settled construction put upon it by the English courts, and hence it should be interpreted in the same manner by our courts, whenever practicable, because that will accord with the presumed intention of the legislature in adopting it.[24] For example, in the third section of the "Interstate Commerce Act," Congress adopted the language of the English traffic act of 1854, in respect to "undue preferences." Hence it is to be presumed that it was intended also to adopt the construction given to these words by the English courts, and they are so construed.[25] But here also, as in the case of a statute adopted from another state, the construction which is to be followed is that which was put upon the act before its adoption. In one of the cases, Chief Justice Marshall is reported to have said: "By adopting them [English statutes] they become our own as entirely as if they had been enacted by the legislature of the state. The received construction in England at the time they are admitted to operate in this country, indeed, to the time of our separation from the British empire, may very properly be considered as accompanying the statutes themselves, and forming an integral part of them. But however we may respect subsequent decisions—and certainly they are entitled

[24] Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U. S. 263, 12 Sup. Ct. 844, 36 L. Ed. 699; Pennock v. Dialogue, 2 Pet. 1, 7 L. Ed. 327; Kirkpatrick v. Gibson, 2 Brock. 388, Fed. Cas. No. 7,848; Kennedy's Heirs v. Kennedy's Heirs, 2 Ala. 571; Tyler v. Tyler, 19 Ill. 151; Adams v. Field, 21 Vt. 256; Marqueze v. Caldwell, 48 Miss. 23; Meakings v. Ochiltree, 5 Port. (Ala.) 395; McKinnon v. McLean, 19 N. C. 79; Lavender v. Rosenheim, 110 Md. 150, 72 Atl. 669, 132 Am. St. Rep. 420; Jarvis v. Hitch, 161 Ind. 217, 67 N. E. 1057; Norfolk & W. R. Co. v. Old Dominion Baggage Co., 99 Va. 111, 37 S. E. 784, 50 L. R. A. 722. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[25] Act Feb. 4, 1887, c. 104, 24 Stat. 380 (U. S. Comp. St. 1901, p. 3155); McDonald v. Hovey, 110 U. S. 619, 4 Sup. Ct. 142, 28 L. Ed. 269; Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U. S. 263, 12 Sup. Ct. 844, 36 L. Ed. 699. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

to great respect—we do not admit their absolute authority. If the English courts vary their construction of a statute which is common to the two countries, we do not hold ourselves bound to fluctuate with them." [26]

RE-ENACTED STATUTES

179. A statute literally or substantially re-enacting a prior statute after its words have received a judicial interpretation must be regarded as adopted with knowledge of such construction and with the intention that it should thereafter be interpreted in the same way.

Re-enacted Statutes.

Where a statute has received a settled judicial construction, and is afterwards re-enacted by the same legislative power, in the same terms, or in substantially the same language, for the same purpose and object, it will be presumed that the legislature intended that the re-enacted law should bear the same interpretation which was given to its original, and it will be construed accordingly, unless a contrary intention is very clearly shown.[27] So, also, when terms

[26] Cathcart v. Robinson, 5 Pet. 264, 8 L. Ed. 120. *See "Statutes," Dec. Dig. (Key No.) § 226; Cent. Dig. § 307.*

[27] The Abbotsford, 98 U. S. 440, 25 L. Ed. 168; Woolsey v. Cade, 54 Ala. 378, 25 Am. Rep. 711; Ex parte Matthews, 52 Ala. 51; O'Byrnes v. State, 51 Ala. 25; Wood-Dickerson Supply Co. v. Coccicola, 153 Ala. 555, 45 South. 192; White v. State, 134 Ala. 197, 32 South. 320; Barnewall v. Murrell, 108 Ala. 366, 18 South. 831; McKenzie v. State, 11 Ark. 594; Harvey v. Travelers' Ins. Co., 18 Colo. 354, 32 Pac. 935; Hoxie v. New York, N. H. & H. R. Co., 82 Conn. 352, 73 Atl. 754; Wilmington City Ry. Co. v. People's Ry. Co. (Del. Ch.) 47 Atl. 245; McGann v. People, 194 Ill. 526, 62 N. E. 941; Smith v. Biesaida (Ind.) 90 N. E. 1009; Rupel v. Ohio Oil Co., 172 Ind. 300, 88 N. E. 508; Sopher v. State, 169 Ind. 177, 81 N. E. 913, 14 L. R. A. (N. S.) 172; Pavey v. Braddock, 170 Ind. 178, 84 N. E. 5; McIntire v. State, 170 Ind. 163, 83 N. E. 1005; Marshall v. Matson, 171 Ind. 238, 86 N. E. 339; State v. Derry, 171 Ind. 18, 85 N. E. 765, 131 Am. St. Rep. 237; State v. Dorsey, 167 Ind. 199, 78 N. E. 843; Cronin v. Zimmermann, 169 Ind. 75, 81 N. E. 1083; Monroe County Com'rs v.

or modes of expression are employed in a new statute, which had acquired a definite meaning and application in a previous statute on the same subject, or one analogous to it, they are generally supposed to be used in the same sense, and in settling the construction of the new statute, regard should be had to the known and established interpretation of the former.[28] Thus, in the federal bankruptcy act of 1841, it was provided that a discharge should not release debts which had been contracted by the bankrupt in a "fiduciary capacity." The same provision was repeated in the bankruptcy act of 1867, and it was held that these words were intended by Congress to bear, and should be construed by the courts to bear, the same meaning which had been given to them by the judicial interpretations under the earlier law.[29]

The same principle applies to a provision in the constitution of a state which has been interpreted and explained

Conner, 155 Ind. 484, 58 N. E. 828; Anderson v. Bell, 140 Ind. 375, 39 N. E. 735, 25 L. R. A. 541; Hilliker v. Citizens' St. R. Co., 152 Ind. 86, 52 N. E. 607; State ex rel. Trimble v. Swope, 7 Ind. 91; Wender Blue Gem Coal Co. v. Louisville Property Co., 137 Ky. 339, 125 S. W. 732; Crescent Bed Co. v. City of New Orleans, 111 La. 124, 35 South. 484; Cota v. Ross, 66 Me. 161; Tuxbury's Appeal, 67 Me. 267; Com. v. Hartnett, 3 Gray (Mass.) 450; McEvoy v. City of Sault Ste. Marie, 136 Mich. 172, 98 N. W. 1006; Easton v. Courtwright, 84 Mo. 27; Camp v. Wabash R. Co., 94 Mo. App. 272, 68 S. W. 96; Kelly v. Thuey, 143 Mo. 422, 45 S. W. 300; Schawacker v. McLaughlin, 139 Mo. 333, 40 S. W. 935; State ex rel. Pearson v. Cornell, 54 Neb. 647, 75 N. W. 25; Wyatt v. State Board of Equalization, 74 N. H. 552, 70 Atl. 387; In re Baird's Estate, 126 App. Div. 439, 110 N. Y. Supp. 708; Erhard v. Kings County (Sup.) 36 N. Y. Supp. 656; Walker v. Bobbitt, 114 Tenn. 700, 88 S. W. 327; Supreme Council A. L. H. v. Anderson, 36 Tex. Civ. App. 615, 83 S. W. 207; Briscoe v. Rich, 20 Utah, 349, 58 Pac. 837; Swift & Co. v. Wood, 103 Va. 494, 49 S. E. 643; Mangus v. McClelland, 93 Va. 786, 22 S. E. 364; Pennington v. Gillaspie, 63 W. Va. 541, 61 S. E. 416; Greaves v. Tofield, L. R. 14 Ch. Div. 563; Ross v. Hannah (Ind.) 91 N. E. 232; Lewis v. State, 58 Tex. Cr. App. 351, 127 S. W. 808. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig. § 306.*

[28] Whitcomb v. Rood, 20 Vt. 49; Kendall v. Garneau, 55 Neb. 403, 75 N. W. 852; Cooper v. Yoakum, 91 Tex. 391, 43 S. W. 871. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig. § 306.*

[29] Woolsey v. Cade, 54 Ala. 378, 25 Am. Rep. 711. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig. § 306.*

by the courts and is afterwards carried bodily into a new constitution.[30] Moreover, it is not only a judicial construction, properly speaking, which may thus be regarded as adopted by the legislature upon the re-enactment of a statute, but where an act of the legislature or of Congress has notoriously and for a long time received a certain practical construction at the hands of the executive or administrative officers charged with the duty of enforcing it, and is afterwards re-enacted without change, it may be presumed that that construction was known to the legislative body and satisfactory to it and was meant to be sanctioned and adopted.[31] And in general, the presumption of the adoption of a previous official interpretation, on the re-enactment of a law, is strengthened by the absence of any language in the new act indicating a contrary intent,[32] as also by the fact that the draughtsman of the new statute (or of the body of laws into which it is incorporated) appended a note indicating an intention to make no change.[33]

[30] Crescent Bed Co. v. City of New Orleans, 111 La. 124, 35 South. 484. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig. § 306.*

[31] United States v. Cerecedo Hermanos y Compania, 209 U. S. 337, 28 Sup. Ct. 532, 52 L. Ed. 821; Copper Queen Consol. Min. Co. v. Territorial Board of Equalization, 206 U. S. 474, 27 Sup. Ct. 695, 51 L. Ed. 1143; State ex rel. Norfolk Beet-Sugar Co. v. Moore, 50 Neb. 88, 69 N. W. 373, 61 Am. St. Rep. 538; Van Veen v. Graham County (Ariz.) 108 Pac. 252. But see Royal Highlanders v. State, 77 Neb. 18, 108 N. W. 183, 7 L. R. A. (N. S.) 380. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig. § 306.*

[32] Atton v. South Chicago City R. Co., 236 Ill. 507, 86 N. E. 277. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig § 306.*

[33] Franks v. Edinberg, 185 Mass. 49, 69 N. E. 1058. *See "Statutes," Dec. Dig. (Key No.) § 225¾; Cent. Dig. § 306.*

CHAPTER XVII

DECLARATORY STATUTES

180. Definition.
181. Declaratory Statutes Not Retrospective.
182. Construction of Declaratory Acts.

DEFINITION

180. A declaratory or expository statute is one passed with the purpose of removing a doubt or ambiguity as to the state of the law, or to correct a construction deemed by the legislature to be erroneous. It either declares what is, and has been, the rule of the common law on a given point, or expounds the true meaning and intention of a prior legislative act.

According to Blackstone, a statute is called declaratory "where the old custom of the kingdom is almost fallen into disuse, or become disputable; in which case the parliament has thought proper, in perpetuum rei testimonium, and for avoiding all doubts and difficulties, to declare what the common law is and ever hath been." [1] In modern usage, however, the term carries a much wider signification than this. "It is a matter of frequent occurrence that the common law, or previous statute law, on a particular subject, is found to be ambiguous and uncertain, and that the legislature passes an act declaring what the common law is and has been on that topic, or explaining the meaning of the language employed in the former act, and the inferences to be drawn from its terms. A declaratory statute in effect promulgates a rule of construction or interpretation. Such laws are usually enacted in consequence of the establishment, by the judicial department, of a settled doctrine in regard to an ambiguous law. But the legislative exposition

[1] 1 Bl. Comm. 86.

is not always in affirmance of the view taken by the courts." [2] "Mr. Fox's libel act declared that, by the law of England, juries were judges of the law in prosecutions for libel; it did not purport to introduce a new rule, but to declare a rule already and always in force. Yet, previous to the passage of this act, the courts had repeatedly held that the jury in these cases were only to pass upon the fact of publication and the truth of the innuendoes, and whether the publication was libelous or not was a question of law which addressed itself exclusively to the court. It would appear, therefore, that the legislature declared the law to be what the courts had declared it was not." [3]

Declaratory statutes, to have the force of law and be binding on the courts, must of course be made by the proper legislative power of the jurisdiction where the law to be expounded is in force. Thus, for example, an English statute expository of the common law, enacted after the separation of America from the British kingdom, has not technically the force of law in the United States. Hence, considered as a declaratory law, it is not authoritative or binding on our courts, in such sense that they would not be at liberty to disregard it and put their own interpretation upon the common law. Yet such an act, as an aid in the elucidation of an obscure point of the common law, will be entitled to respectful consideration.[4]

DECLARATORY STATUTES NOT RETROSPECTIVE

181. A declaratory statute, in so far as it is applicable to facts and transactions occurring after its enactment, is binding on the courts; but in so far as it is intended to have a retrospective effect upon vested rights, pending controversies, or past trans-

[2] Black, Const. Prohib. § 194.

[3] Cooley, Const. Lim. 93.

[4] Bull v. Loveland, 10 Pick. (Mass.) 9. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 175.*

actions, it is invalid, as an unlawful assumption of judicial power, and consequently not obligatory upon the courts.[5]

"In the very nature of things," says the Supreme Court of Pennsylvania, "interpretation follows legislation, and is not to be confounded with it, either as an act or as an authority. The duties are as distinct as possible, and the performance of them is given to different offices, yet without preventing the legislature from embodying in a statute rules for its interpretation, or from making a new law, by changing the interpretation or application of an old one relative to future cases." [6] The rule is more fully explained by the New York court of chancery in the following terms: "In England, where there is no constitutional limit to the powers of Parliament, a declaratory law forms a new rule of decision, and is valid and binding upon the courts, not

[5] Koshkonong v. Burton, 104 U. S. 668, 26 L. Ed. 886; Union Iron Co. v. Pierce, 4 Biss. 327, Fed. Cas. No. 14,367; Stebbins v. Board of Co. Com'rs Pueblo Co. (C. C.) 4 Fed. 282; Gorman v. Sinking Fund Com'rs (C. C.) 25 Fed. 647; Singer Mfg. Co. v. McCollock (C. C.) 24 Fed. 667; Lambertson v. Hogan, 2 Pa. 22; Greenough v. Greenough, 11 Pa. 489, 51 Am. Dec. 567; Reiser v. William Tell Sav. Fund Ass'n, 39 Pa. 137; Haley v. City of Philadelphia, 68 Pa. 45, 8 Am. Rep. 153; City of Cambridge v. City of Boston, 130 Mass. 357; Todd v. Clapp, 118 Mass. 495; Shallow v. City of Salem, 136 Mass. 136; Dash v. Van Kleeck, 7 Johns. (N. Y.) 477, 5 Am. Dec. 291; People v. Board of Sup'rs of City and County of New York, 16 N. Y. 424; Lincoln Building & Saving Ass'n v. Graham, 7 Neb. 173; Kelsey v. Kendall, 48 Vt. 24; McNichol v. United States Mercantile Reporting Agency, 74 Mo. 457; McManning v. Farrar, 46 Mo. 376; Dequindre v. Williams, 31 Ind. 444; James v. Rowland, 52 Md. 462; Lindsay v. United States Savings & Loan Ass'n, 120 Ala. 156, 24 South. 171, 42 L. R. A. 783; People ex rel. Akin v. Kipley, 171 Ill. 44, 49 N. E. 229, 41 L. R. A. 775; Forster v. Forster, 129 Mass. 559; Getz v. Brubaker, 25 Pa. Super. Ct. 303; Friend v. Levy, 76 Ohio St. 26, 80 N. E. 1036; In re Handley's Estate, 15 Utah, 212, 49 Pac. 829, 62 Am. St. Rep. 926; Weisberg v. Weisberg, 112 App. Div. 231, 98 N. Y. Supp. 260; Great Northern Ry. Co. v. Snohomish County, 48 Wash. 478, 93 Pac. 924; Thompson v. Burnham, 13 Gray (Mass.) 211; McCleary v. Babcock, 169 Ind. 228, 82 N. E. 453. *See "Statutes," Dec. Dig. (Key No.) § 269; Cent. Dig. § 362.*

[6] West Branch Boom Co. v. Dodge, 31 Pa. 285. *See "Statutes," Dec. Dig. (Key No.) § 269; Cent. Dig. § 362.*

only as to cases which may subsequently occur, but also as to pre-existing and vested rights. But even there the courts will not give a statute a retrospective operation, so as to deprive a party of a vested right, unless the language of the law is so plain and explicit as to render it impossible to put any other construction upon it. In this country, where the legislative power is limited by written constitutions, declaratory laws, so far as they operate upon vested rights, can have no legal effect in depriving an individual of his rights, or to change the rule of construction as to a pre-existing law. Courts will treat such laws with all the respect which is due to them as an expression of the opinion of the individual members of the legislature, as to what the rule of law previously was. But beyond that they can have no binding effect, and if the judge is satisfied the legislative construction is wrong, he is bound to disregard it." [7] Especially is this principle applied with firmness when the effect of the declaratory law, by reversing the construction previously put upon the common law or statutes by the judiciary, would unsettle titles or change the legal effect of acts performed by parties in reliance upon the stability of the judicial interpretations. So also in regard to pending controversies; a party has a right to the decision of the court as to the meaning of a statute applicable to his case, independently of a declaratory act on the subject passed while the suit was pending.[8]

But if no rights or titles will be affected, there is authority for holding that a declaratory statute may be accorded a retroactive operation. It is said that while it is not within the competency of the legislative power to deprive a person of a vested right by means of a declaratory act, yet where no right has been secured under the former act or its judicial interpretation, the legislature may declare its meaning by a subsequent law, and this will have the effect of

[7] Salters v. Tobias, 3 Paige, Ch. (N. Y.) 338. *See "Statutes," Dec. Dig. (Key No.) § 269; Cent. Dig. § 362.*

[8] Ogden v. Blackledge, 2 Cranch, 272, 2 L. Ed. 276; Stephenson v. Doe ex dem. Wait, 8 Blackf. (Ind.) 508, 46 Am. Dec. 489. *See "Statutes," Dec. Dig. (Key No.) § 269; Cent. Dig. § 362.*

giving to the former act the same meaning and effect as if the declaratory statute had been embodied in the original act at the time of its enactment.[9] In Georgia, it is said that a legislative exposition of a doubtful law is the exercise of a judicial power; yet if it interferes with no vested rights, impairs the obligation of no contract, and is not in conflict with the primary principles of the social compact, it is in itself harmless, and may be admitted to retroactive efficiency; but if rights have grown up under a law of ambiguous meaning, then it cannot interfere with them.[10] It should also be noticed that a subsequent act, which, considered as an exposition of a previous one, may have no force, may still be of effect as a new grant of power. Thus, while the legislature has no authority to construe the charter of a corporation, yet a statute purporting to do so may, if the words will carry such a meaning, operate as a new grant of power to the corporation.[11]

CONSTRUCTION OF DECLARATORY ACTS

182. A declaratory statute will be so construed as to carry out the intention of the legislature in enacting it, so far as that is legally possible; but it will not be extended beyond its terms.

The judicial department of government must determine the construction of all laws involved in cases before them; but it is also their duty to give to a declaratory statute its intended practical operation so far as that is possible.[12]

[9] Washington, A. & G. R. Co. v. Martin, 7 D. C. 120; State ex rel. Trustees of Montgomery County Children's Home v. Trustees of Ohio Soldiers' and Sailors' Orphans' Home, 37 Ohio St. 275; McCleary v. Babcock, 169 Ind. 228, 82 N. E. 453. *See "Statutes," Dec. Dig. (Key No.) § 269; Cent. Dig. § 362.*

[10] McLeod v. Burroughs, 9 Ga. 213. *See "Statutes," Dec. Dig. (Key No.) § 269; Cent. Dig. § 362.*

[11] Aikin v. Western R. Corp., 20 N. Y. 370. *See "Statutes," Dec. Dig. (Key No.) § 269; Cent. Dig. § 362.*

[12] Bassett v. United States, 2 Ct. Cl. 448. And see Townsend Sav.

This is the generally admitted rule. But in some few states, the courts have been reluctant to concede even this much to the legislative body. Thus, in an early case in Minnesota, it is said that the opinion of a subsequent legislature upon the meaning of a prior statute is entitled to no more weight than that of the same men in a private capacity.[13] In Kentucky, a clause of the general statutes provides that "all words and phrases shall be construed and understood according to the common and approved usage of language." This, it is said, is only declaratory of a part of the common law on the subject; and there are other rules of construction which are of equal dignity and importance, which, although not incorporated in the statute, are as binding upon the courts as if embodied in it.[14] In general, a declaratory statute will be held down to its natural and intended scope, and will not be considered as modifying received or legitimate constructions beyond its terms. For instance, a section of a code provided that "signature, or subscription, includes mark, when the person cannot write, and when his mark is attested," etc. It was held that this did not define the word when found elsewhere than in the code. "If this clause," said the court, "avoids writings to the validity of which signature or subscription is by mark, and not attested as prescribed, it would not affect a mortgage of personal property, which is valid without writing, and to which the signature of the mortgagor is not required by the code or any provision thereof." [15]

Bank v. Epping, 3 Woods, 390, Fed. Cas. No. 14,120. *See "Statutes," Dec. Dig. (Key No.) § 176; Cent. Dig. § 255.*

[13] Bingham v. Board of Sup'rs of Winona County, 8 Minn. 441 (Gil. 390). *See "Statutes," Dec. Dig. (Key No.) § 220; Cent. Dig. § 298.*

[14] Bailey v. Commonwealth, 11 Bush (Ky.) 688. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 175, 178; Cent. Dig. §§ 254, 257.*

[15] Alabama Warehouse Co. v. Lewis, 56 Ala. 514. *See "Statutes," Dec. Dig. (Key No.) §§ 174, 175; Cent. Dig. § 254; "Signatures," Cent. Dig. § 7.*

CHAPTER XVIII

THE RULE OF STARE DECISIS AS APPLIED TO STATUTORY CONSTRUCTION

183. The General Principle.
184. Effect of Reversing Construction.
185. Federal Courts Following State Decisions.
186. Construction of Statutes of Other States.

THE GENERAL PRINCIPLE

183. A settled judicial construction put upon a statute has almost the same authority as the statute itself; and though the courts have the power to overrule their decisions and change the construction, they will not do so except for the most urgent reasons.

The rule just stated is not a modern invention. It has for a very long period of time been respected by the courts, and is now supported by a multitude of authorities.[1] It is an ancient maxim of the law that "legis interpretatio legis vim obtinet"; that is to say, the authoritative interpretation put upon the written law by the courts acquires the force of law, by becoming, as it were, a part of the statute itself.[2] The importance of adhering to this rule is seen in the fact that the judicial explanation of an obscure or ambiguous statute is at once accepted as correct by those whose rights or actions may be affected by the statute, and innumerable transactions will thereafter depend for their

[1] Hammond v. Anderson, 4 Bos. & P. 69; King v. Younger, 5 Durn. & E. 449; King v. Inhabitants of Eccleston, 2 East, 299; Queen v. Chantrell, L. R. 10 Q. B. 587; People v. Albertson, 55 N. Y. 50; Wolf v. Lowry, 10 La. Ann. 272; State v. Thompson, 10 La. Ann. 122; City of New Orleans v. Poutz, 14 La. Ann. 853; Beck v. Brady, 7 La. Ann. 1; Seale v. Mitchell, 5 Cal. 401; Sheridan v. City of Salem, 14 Or. 328, 12 Pac. 925; Despain v. Crow, 14 Or. 404, 12 Pac. 806; Davidson v. Biggs, 61 Iowa, 309, 16 N. W. 135. *See "Courts," Dec. Dig. (Key No.) § 90; Cent. Dig. § 318.*

[2] Branch, Principia (1st Am. Ed.) 76.

validity and effect upon the permanence of the judicial construction in view of which they were had. "The court almost always, in deciding any question, creates a moral power above itself; and when the decision construes a statute, it is legally bound, for certain purposes, to follow it as a decree emanating from a paramount authority, according to its various applications in and out of the immediate case." [3] So, Lord Chancellor Cairns, speaking of revenue acts, observes: "The object must be, above that of all other acts, to maintain them and to expound them in a manner which will be consistent, and which will enable the subjects of this country to know what exactly is the amount of the charge and burden which they are to sustain. I think that, with regard to statutes of that kind, above all others, it is desirable, not so much that the principle of the decision should be capable at all times of justification, as that the law should be settled, and should, when once settled, be maintained without any danger of vacillation or uncertainty." [4] Even though the court, when the question of the construction of the statute comes up a second time, should be satisfied that the original construction was founded in error, yet, if it is seen that great mischief would ensue from a change in the interpretation, the court will yield the construction which it would otherwise regard as the true one, in favor of that interpretation which has been universally received and long acted on.[5] More especially when the construction given to a statute has become what is called a "rule of property" (that is, a rule under which titles have become fixed and upon the continuance of which property rights depend), it should be adhered to, even though questionable, so long as the statute itself remains unchanged.[6]

[3] Bates v. Relyea, 23 Wend. (N. Y.) 336. *See "Courts," Dec. Dig. (Key No.) § 90; Cent. Dig. § 318.*

[4] Com'rs of Inland Revenue v. Harrison, L. R. 7 H. L. 1. *See "Courts," Dec. Dig. (Key No.) § 90; Cent. Dig. § 318.*

[5] Van Loon v. Lyon, 4 Daly (N. Y.) 149. *See "Courts," Dec. Dig. (Key No.) § 90; Cent. Dig. § 318.*

[6] Day v. Munson, 14 Ohio St. 488; Aicard v. Daly, 7 La. Ann. 612; Farmer's Heirs v. Fletcher, 11 La. Ann. 142. In Windham v. Chetwynd, 1 Burr. 414, Lord Mansfield said that when solemn determina-

And the same opinion has been expressed with regard to the interpretation of statutes which involve questions of practice; decisions under which a practice has grown up, though erroneous, will still be followed.[7]

Although, in general, this doctrine applies only to judicial interpretations of statutes settled by the deliberate judgments of the court of last resort in the state, yet the rule has sometimes been extended so as to include adjudications of minor authority. Thus, in Mississippi, it is said that when the true meaning of a statute is doubtful, a construction which has been adopted by the inferior courts for a long period of time, and under which important rights have accrued, will not be disturbed by the Supreme Court of the state.[8] And in Kentucky, in a similar case of doubt, a legislative exposition of the statute, together with an extrajudicial dictum of the Supreme Court formerly made, were allowed to have a decisive influence.[9] A contemporaneous practical construction of a statute, under which rights of property have been acquired, will be upheld, when this can properly be done.[10]

EFFECT OF REVERSING CONSTRUCTION

184. Where rights of property have accrued, and contracts have been made, in reliance upon the judicial construction of a statute, and were valid at the time of their inception under such construction, a subse-

tions, acquiesced under, had settled precise cases, and become a rule of property, they ought, for the sake of certainty, to be observed as if they had originally made a part of the text of the statute. *See "Courts," Dec. Dig. (Key No.) § 93; Cent. Dig. § 338.*

[7] Succession of Lauve, 6 La. Ann. 529. *See "Courts," Dec. Dig. (Key No.) § 90; Cent. Dig. §§ 318, 319.*

[8] Plummer v. Plummer, 37 Miss. 185. *See "Courts," Dec. Dig. (Key No.) § 218; Cent. Dig. § 294.*

[9] Commonwealth v. Miller, 5 Dana (Ky.) 320. *See "Courts," Dec. Dig. (Key No.) § 89; Cent. Dig. § 312; "Statutes," Dec. Dig. (Key No.) 220; Cent. Dig. § 298.*

[10] Matter of Warfield's Will, 22 Cal. 51, 83 Am. Dec. 49. *See "Statutes," Dec. Dig. (Key No.) § 218; Cent. Dig. §§ 294, 295.*

quent decision, overruling prior decisions and reversing the construction established thereby, will not be allowed to retroact, so as to destroy those rights or invalidate those contracts.

Judicial decisions are evidences of the law; but when they are not long established, and are palpably erroneous and plainly productive of injustice, they should be overruled, and it is the right and duty of the courts to do so.[11] But the settled judicial construction of a statute, so far as contract rights were acquired thereunder, is as much a part of the statute as the text itself; and a change of decision is the same in its effect on pre-existing contracts as a repeal or an amendment by legislative enactment.[12] "We hold the doctrine to be sound and firmly established," says the Supreme Court of Alabama, "that rights to property and the benefits of investments acquired by contract, in reliance upon a statute as construed by the Supreme Court of the state, and which were valid contracts under the statute as thus interpreted, when the contracts or investments were made, cannot be annulled or divested by subsequent decisions of the same court overruling the former decisions; that as to such contracts or investments, it will be held that the decisions which were in force when the contracts were made had established a rule of property, upon which the parties had a right to rely, and that subsequent decisions cannot retroact so as to impair rights acquired in good faith under a statute as construed by the former decisions." [13]

[11] Paul v. Davis, 100 Ind. 422. *See "Courts," Dec. Dig. (Key No.) §§ 90, 100; Cent. Dig. §§ 320, 341–343.*

[12] Douglass v. Pike County, 101 U. S. 677, 25 L. Ed. 968; Ohio Life Ins. & T. Co. v. Debolt, 16 How. 432, 14 L. Ed. 997; Taylor v. Ypsilanti, 105 U. S. 72, 26 L. Ed. 1008; Geddes v. Brown, 5 Phila. (Pa.) 180; Farrior v. New England Mortgage Co., 92 Ala. 176, 9 South. 532, 12 L. R. A. 856; Levy v. Hitzche, 40 La. Ann. 500, 4 South. 472; Paulson v. City of Portland, 16 Or. 450, 19 Pac. 450, 1 L. R. A. 673; Stephenson v. Boody, 139 Ind. 60, 38 N. E. 331. *See "Courts," Dec. Dig. (Key No.) §§ 90, 100; Cent. Dig. §§ 320, 341–343.*

[13] Farrior v. New England Mortgage Co., 92 Ala. 176, 9 South. 532, 12 L. R. A. 856. *See "Courts," Dec. Dig. (Key No.) §§ 90, 100; Cent. Dig. §§ 320, 341–343.*

FEDERAL COURTS FOLLOWING STATE DECISIONS

185. The settled construction put upon a public statute of a state by the courts of that state will be accepted as authentic by the courts of the United States, and will be adopted and applied by them, without inquiry as to its soundness, unless some question of federal law is involved, such as the conformity of the statute to the Constitution or laws of the United States.

This rule was announced by the Supreme Court of the United States at an early day, and has ever since been consistently followed and adhered to.[14] But the rule "has grown up and been held with constant reference to the other rule, stare decisis; and it is only so far and in such cases as this latter rule can operate that the other has any effect. If the construction put by the court of a state upon one of its statutes was not a matter in judgment, if it might have been decided either way without affecting any right brought into question, then, according to the principles of the common law, an opinion on such a question is not a decision. To make it so, there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties and decide to whom the property in contestation belongs. And therefore

[14] McKeen v. Delancy's Lessee, 5 Cranch, 22, 3 L. Ed. 25; Elmendorf v. Taylor, 10 Wheat. 152, 6 L. Ed. 289; McDowell v. Peyton, 10 Wheat. 454, 6 L. Ed. 364; Shelby v. Guy, 11 Wheat. 361, 6 L. Ed. 495; Leffingwell v. Warren, 2 Black (U. S.) 599, 17 L. Ed. 261; Christy v. Pridgeon, 4 Wall. 196, 18 L. Ed. 322; Nichol v. Levy, 5 Wall. 433, 18 L. Ed. 596; Walker v. State Harbor Com'rs, 17 Wall. 648, 21 L. Ed. 744; Tioga R. Co. v. Blossburg & C. R. Co., 20 Wall. 137, 22 L. Ed. 331; Lamborn v. Dickinson County Com'rs, 97 U. S. 181, 24 L. Ed. 926; Douglass v. Pike County, 101 U. S. 677, 25 L. Ed. 968; Bucher v. Cheshire R. Co., 125 U. S. 555, 8 Sup. Ct. 974, 31 L. Ed. 795; Cornell University v. Fiske, 136 U. S. 152, 10 Sup. Ct. 775, 34 L. Ed. 427; Dundee Mortgage T. I. Co. v. Parrish (C. C.) 24 Fed. 197. *See "Courts," Dec. Dig. (Key No.) § 366; Cent. Dig. §§ 954–968.*

this court and other courts organized under the common law has never held itself bound by any part of an opinion, in any case, which was not needful to the ascertainment of the right or title in question between the parties." [15] If there is no decision by the courts of the state on the interpretation of a statute of the state, and nothing on which to found a practical construction, or if the decisions of the state courts are conflicting and the interpretation unsettled, then the federal courts will decide for themselves as to the true construction of the statute.[16] And if the highest judicial tribunal of a state adopts new views as to the proper construction of a statute of the state, and reverses its former decisions, the federal courts will follow the latest settled adjudications.[17] But the rule that the courts of the United States must accept as binding the interpretation of a state statute by the courts of that state is subject to this exception, that in cases where the federal courts are called upon to interpret the contracts of states, they will not follow the construction adopted by the Supreme Court of the state in such a matter when they entertain a different opinion; and this, whether the contract alleged be claimed to be such under the form of state legislation, or has been made by a covenant or agreement by the agents of a state by its authority.[18] "Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established

[15] Carroll v. Carroll's Lessee, 16 How. 275, 286, 14 L. Ed. 936. *See "Courts," Dec. Dig. (Key No.) § 366; Cent. Dig. §§ 954–968.*

[16] Gardner v. Collins, 2 Pet. 58, 7 L. Ed. 347; Sohn v. Waterson, 17 Wall. 596, 21 L. Ed. 737; Burgess v. Seligman, 107 U. S. 20, 2 Sup. Ct. 10, 27 L. Ed. 359; Myrick v. Heard (C. C.) 31 Fed. 241; Southern Pac. R. Co. v. Orton (C. C.) 32 Fed. 457. *See "Courts," Dec. Dig. (Key No.) § 366; Cent. Dig. §§ 954–968.*

[17] Leffingwell v. Warren, 2 Black (U. S.) 599, 17 L. Ed. 261; Green v. Neal, 6 Pet. 291, 8 L. Ed. 402; Suydam v. Williamson, 24 How. 427, 16 L. Ed. 742. *See "Courts," Dec. Dig. (Key No.) § 366; Cent. Dig. §§ 954–968.*

[18] Jefferson Branch Bank v. Skelly, 1 Black (U. S.) 436, 17 L. Ed. 173; Bridge Proprietors v. Hoboken Land & Improv. Co., 1 Wall. 116, 17 L. Ed. 571. *See "Courts," Dec. Dig. (Key No.) § 366; Cent. Dig. §§ 954–968.*

which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of state constitutions and statutes. Such established rules are always regarded by the federal courts, no less than by the state courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled, it is the right and duty of the federal courts to exercise their own judgment, as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have accrued thereon, under a particular state of the decisions, or when there has been no decision, of the state tribunals, the federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the state courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the federal courts will lean towards an agreement of views with the state courts, if the question seems to them balanced with doubt." [19] Where two or more states have adopted statutes in the same or substantially the same terms, but their courts differ in regard to the interpretation of the statute, the federal courts will administer the laws of each state, as therein construed, without regard to the apparent inconsistency which will result in their own decisions. In this event, such local statutes are treated as different laws, each embodying the particular construction of its own state, and enforced in accordance with it in all cases arising under it.[20] As a deduction from the general rule that the decisions of the supreme court of a state, interpreting a statute of such

[19] Burgess v. Seligman, 107 U. S. 20, 2 Sup. Ct. 10, 27 L. Ed. 359. *See "Courts," Dec. Dig. (Key No.) § 366; Cent. Dig. §§ 954–968.*

[20] Shelby v. Guy, 11 Wheat. 361, 6 L. Ed. 495; Christy v. Pridgeon, 4 Wall. 196, 18 L. Ed. 322; Louisiana ex rel. Southern Bank v. Pilsbury, 105 U. S. 278, 294, 26 L. Ed. 1090; Randolph's Ex'r v. Quidnick Co., 135 U. S. 457, 10 Sup. Ct. 655, 34 L. Ed. 200; Bauserman v. Blunt, 147 U. S. 647, 13 Sup. Ct. 466, 37 N. E. 316. *See "Courts," Dec. Dig. (Key No.) § 366; Cent. Dig. §§ 954–968.*

state, are binding on the federal courts, it has been held that where the Supreme Court of the United States, upon a mistaken view of the purport and effect of a decision of the Supreme Court of the state in such a case, renders a decision in conflict therewith, that decision is not binding on the state courts.[21]

CONSTRUCTION OF STATUTES OF OTHER STATES

186. The construction put upon a state statute by the courts of that state will be accepted as correct, and followed, by the courts of another state, when called upon to interpret and apply the statute.[22]

If it does not appear that the particular statute has ever been judicially construed in the state of its origin, or if no proof is given of the interpretation given to it by the courts of that state, the courts of the state where the case is on trial will construe the statute as they would a like statute in their own state.[23] But in a case in Tennessee, where the court was called upon to interpret the Arkansas statute of frauds, as applicable to the contract in suit, which was made

[21] Goodnow v. Wells, 67 Iowa, 654, 25 N. W. 864. *See "Courts," Dec. Dig. (Key No.) § 366; Cent. Dig. §§ 954–968.*

[22] Blaine v. Curtis, 59 Vt. 120, 7 Atl. 708, 59 Am. Rep. 702; Jessup v. Carnegie, 80 N. Y. 441, 36 Am. Rep. 643; Savings Ass'n of St. Louis v. O'Brien, 51 Hun, 45, 3 N. Y. Supp. 764; Howe v. Welch, 17 Abb. N. C. (N. Y.) 397; Hoyt v. Thompson, 3 Sandf. (N. Y.) 416; American Print Works v. Lawrence, 23 N. J. Law, 590, 57 Am. Dec. 420; Lane & Co. v. Watson, 51 N. J. Law, 186, 17 Atl. 117; Van Matre v. Sankey, 148 Ill. 536, 36 N. E. 628, 23 L. R. A. 665, 39 Am. St. Rep. 196; Johnston v. Southwestern R. Bank, 3 Strob. Eq. (S. C.) 263; Carlton v. Felder, 6 Rich. Eq. (S. C.) 58; McMerty v. Morrison, 62 Mo. 140; Hamilton v. Hannibal & St. J. R. Co., 39 Kan. 56, 18 Pac. 57; Crooker v. Pearson, 41 Kan. 410, 21 Pac. 270. *See "Courts," Dec. Dig. (Key No.) § 95; Cent. Dig. §§ 322, 323; "Statutes," Cent. Dig. § 256.*

[23] Smith v. Bartram, 11 Ohio St. 690; Bond v. Appleton, 8 Mass. 472, 5 Am. Dec. 111. *See "Courts," Dec. Dig. (Key No.) § 95; Cent. Dig. §§ 322, 323; "Statutes," Cent. Dig. § 256.*

and to be performed in Arkansas, and no decisions of the Arkansas courts could be found construing the statute, but in New York, where that part of the statute was expressed in the same terms, it had received a judicial interpretation, the Tennessee court adopted the construction settled by the New York courts.[24] In Louisiana, it is said that while, in ordinary cases, the decisions of the courts of other states on their own statutes, not involving questions under the federal constitution, will be adopted as decisive, yet where they differ from the Supreme Court of the United States, the interpretation of the latter, if more in harmony with the Louisiana jurisprudence, will be adopted, and particularly when the matter is one which may be reviewed by the federal courts.[25]

[24] Anderson v. May, 10 Heisk. (Tenn.) 84. *See "Courts," Dec. Dig. (Key No.) § 95; Cent. Dig. §§ 322, 323; "Statutes," Cent. Dig. § 256.*

[25] Davis v. Robertson, 11 La. Ann. 752. *See "Courts," Dec. Dig. (Key No.) § 95; Cent. Dig. §§ 322, 323; "Statutes," Cent. Dig. § 256.*

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WEST PUBLISHING CO., PRINTERS, ST. PAUL, MINN.